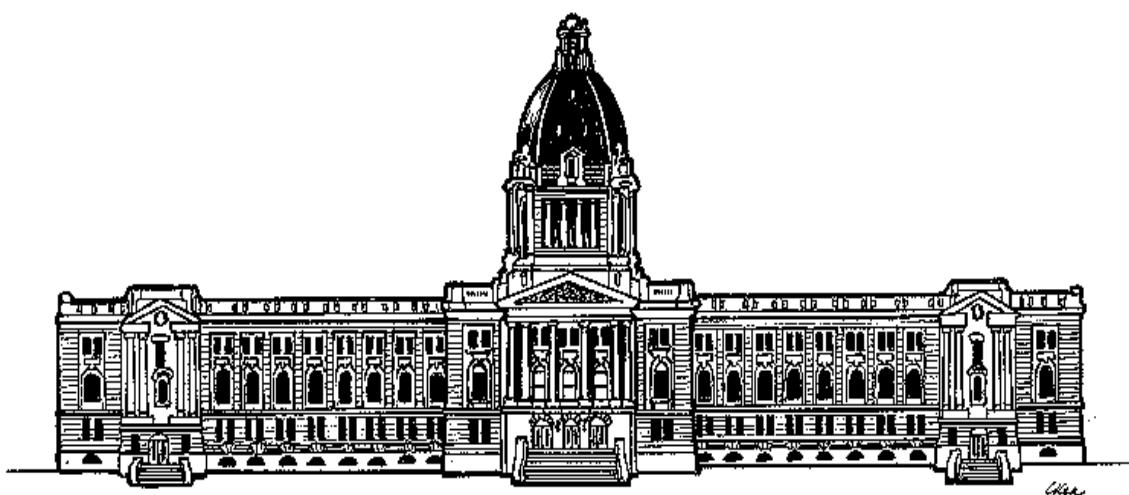




# **STANDING COMMITTEE ON HUMAN SERVICES**

**Hansard Verbatim Report**

**No. 44 — February 27, 2007**



**Legislative Assembly of Saskatchewan**

**Twenty-fifth Legislature**

**STANDING COMMITTEE ON HUMAN SERVICES  
2007**

Ms. Judy Junor, Chair  
Saskatoon Eastview

Mr. Wayne Elhard, Deputy Chair  
Cypress Hills

Mr. Lon Borgerson  
Saskatchewan Rivers

Ms. Joanne Crofford  
Regina Rosemont

Mr. Peter Prebble  
Saskatoon Greystone

Mr. Don Toth  
Moosomin

Mr. Milton Wakefield  
Lloydminster

[The committee met at 13:31.]

**Bill No. 40 — The Status of the Artist Amendment Act, 2006**

**The Chair:** — Good afternoon, everyone. The Committee on Human Services will now resume. The discussion before us is Bill No. 40, the Act to amend The Status of the Artist Act. And before we start again, since we have new presenters today, we'll introduce ourselves as a committee. I'm Judy Junor, the MLA [Member of the Legislative Assembly] from Eastview, Saskatoon Eastview, and I'm chairing the committee. We'll start over on my right with the Deputy Chair.

**Mr. Elhard:** — Good afternoon. My name's Wayne Elhard. I'm the MLA for Cypress Hills.

**Ms. Draude:** — Hi. I'm June Draude. I'm the MLA from Kelvington-Wadena.

**Mr. Toth:** — Don Toth, MLA, Moosomin.

**Ms. Crofford:** — Joanne Crofford, MLA, Regina Rosemont.

**Mr. Iwanchuk:** — Andy Iwanchuk, MLA, Saskatoon Fairview.

**Ms. Morin:** — Hi. My name is Sandra Morin, and I'm the MLA for Regina Walsh Acres.

**Mr. Carpentier:** — Hi. I'm Michel Carpentier. I'm the committee researcher.

**Mr. Kaczkowski:** — And I'm Viktor Kaczkowski, the Clerk of the committee.

**The Chair:** — Thank you. Now the first presenters up today are ACTRA [Alliance of Cinema, Television and Radio Artists], Canada and Saskatchewan. And if we could have you introduce yourselves and begin your presentation.

**Mr. Bratt:** — I'm Alan Bratt.

**Mr. Topp:** — My name is Brian Topp. I'm here representing ACTRA national.

**Mr. Burns:** — I'm Mike Burns, the branch representative for ACTRA Saskatchewan.

**The Chair:** — Welcome. Please proceed.

**Mr. Bratt:** — I'll repeat myself. My name is Alan Bratt. I'm the president of the Saskatchewan branch of ACTRA. I'd also like to introduce our branch representative, Mike Burns, and Brian Topp, who represents ACTRA national and who will be speaking after me.

I have been a member of ACTRA for over 20 years, and in all that time I've lived and worked in Saskatchewan. I've raised my children here, and my family has farmed here for more than 100 years. I've worked as an actor, but I've also worked at other things. Acting is a difficult field to make a steady buck. I know people who are far more talented than I who wait on tables, rig scaffolds, work in offices to make ends meet. There is nothing

wrong with that. It's all honest work, and you can often take that experience and make your acting better.

I've farmed, taught, built things, driven things, fixed things, and made curling ice. The last one shouldn't need any explanation in Saskatchewan. We've taught the rest of the world what the game is about. Maybe we taught some of them too well.

ACTRA has been a presence in Saskatchewan for over 40 years. In fact this day is the anniversary of our establishment as a branch. Jean Freeman, who holds the no. 1 membership in our branch, appears frequently as the mayor's mother in *Corner Gas*. She and Lynn Goldman and Les Crossman and Ken Mitchell and others saw the need for artists in our field to be represented by a body that reflected our interests at a national and local level. ACTRA has done that.

In the early days much of our work came from the CBC [Canadian Broadcasting Corporation]. So even back then we were dealing with a national organization, and our agreements were largely national agreements. Since then a local film and television industry has grown up in this province. The benefits of having agreements that treat our performers and our producers with the same seriousness and respect that they would have in Halifax or Calgary or, yes, even Toronto, has proved invaluable. We don't just exist in Saskatchewan.

The other day I went to an audition. On the front of the script was an address. It was in Los Angeles, California. I have been in shows where much of the production money came from Europe. A few years ago my daughter came home from school and said one of her friends had been in Saudi Arabia and had seen me in a show that had been shot here.

What we do in Saskatchewan isn't just local, and the impetus for it doesn't always come from here. The global economy is nothing new to people in Saskatchewan. Those of us who have been in agriculture know it's always been a global economy. And now we're moving into film and television and new media on a global scale.

The agreements that have been negotiated by ACTRA on a national basis make sure I get paid. And yes, when I act, I do it because I love to do it. But I also do it for money because in this world people respect what they have to pay for. Anything that imperils the protections I enjoy under actors' agreements makes me nervous and there are elements in the status of the artist report that do that. ACTRA has established voluntary agreements with its engagers that stand as models to other countries and I want to see that those agreements and the organization that has fostered them are respected in any forthcoming legislation.

Do not mistake me. I am proud of my province for bringing forward legislation that will help artists to work in this province and I am proud that others are watching what we will do. Once again Saskatchewan is a place where the future is imagined.

Next year country doesn't just mean that we hope next year will turn out better. It means we will make it better. That's why we're making this submission to the committee. We want to help create legislation that will guide others in how to honour

existing protections for artists while breaking new ground for those who are not protected.

**The Chair:** — Thank you.

**Mr. Topp:** — I guess I just want to add that that is a great pleasure to be here in front of the committee here today on the 40th anniversary of our Saskatchewan branch. And a fitting time to come and speak in front of the committee and to say you know, that ACTRA is quite supportive of the legislature moving forward with the status of the artist legislation. It's a fine thing that you are working on.

But we're also here to talk to you about learning from mistakes made in other jurisdictions and to talk to you about how it's important to go forward with this legislation in a way that does no harm. So we want to talk to you about some of the details of that and point out to you that if we can do that, if we can go forward with the status of the artist legislation but a form of the legislation that learns from mistakes made in other jurisdictions and that does no harm, then we will indeed have a Bill out of this legislature that I think you're going to find is going to be widely studied in other jurisdictions and may well serve as a national model.

So let's start with the first part of that. I do think that we're here to encourage you to go for it, to go for status of the artist legislation, to take a run at it and do it basically on the principle that people do have the right to form associations and to be represented if that's what they want. And so the business that is before this committee is important business.

The labour code doesn't work well in the arts for many of the same reasons that the labour code and its basic elements doesn't work in the construction industry. You've got productions that come and go quickly and you have employees who are very precariously and briefly employed and so the methods and rules that are spelled out in labour codes don't work in the arts.

And you've seen in some of the testimony that you've been discussing, for example some of the numbers that you were talking about yesterday, some of the consequences for people in the arts about the fact that they have a difficult time forming associations. You discussed the low incomes that you see in the arts. You discussed the lack of benefits for the families of people in the arts, and I think you're coming to appreciate the fact that choosing to have a career in the arts is often a decision to retire into poverty. So it does make good sense to create a legislative framework that allows the people in the arts to form associations to make sure that they get paid and to pool together to get a benefits plan and to get a pension plan.

And we strongly encourage you to continue to work on that, and we argue that engagers win too when people in the arts can do that. Artists and performers who are reasonably paid and have benefits and a shot at a reasonable retirement are people who focus on doing their best work, and that allows everybody to win.

Does that mean the end of local theatre and the end of the local arts scene? I think maybe we can get into some discussion about that in this meeting. We argue absolutely not.

But you know we wouldn't be an arts organization if we didn't have some concerns, and so here we are to talk about those. And I'd like to point out to you a few of the mistakes that I think that we have clearly seen play themselves out in the provincial jurisdiction that went down this road in the province of Quebec. And always on the theme that we're urging you when you go down this route to help people in the arts form organizations, we need to find a way to do it that does no harm.

So here's the first issue. The first issue that we urge you to be very careful about is the fact that we have an existing contracted relationship. Our union has been around for 64 years. We have a contract that has been in place in basically its current form into its fourth decade. But if the legislation isn't written right, it will read our relationship with the film and television industry as a blank sheet of paper and require us to go through a first-contract exercise. And so basically four decades of careful work with the film and television community gets thrown out the window through a series of votes in the legislature, and we have to start from a blank sheet of paper.

You heard our engagers come and talk to you yesterday and urge you not to do that, so I think your solution is to have a transition chapter in your Act that includes a deeming provision in which the legislature either through regulation or through ministerial order can point to the relatively few but the very important existing relationships that are currently in place and declare them to be valid contracts under your legislation, or in other words, to declare the existing contracts to be first contracts. If you did that, then you have enshrined into your legislation the work that's already there, and you are not requiring it to all be done again.

A second issue and a big one is the issue of who's included, who is captured by definition of artist under status of the artist legislation, and I need to take you here into the film industry a little bit, okay, and talk about a very specific and important issue that our industry bumped into as a consequence of Quebec status of the artist legislation.

The key players in the film industry in terms of the folks who work for it are actors, represented by ACTRA; directors and crew represented by the Directors Guild; writers represented by the Writers Guild. Guy Vanderhaeghe, a member, was telling you a little about it yesterday. And then the crew unions, mostly represented by IATSE [International Alliance of Theatrical Stage Employees], most of the country, and also by CEP [Communications, Energy and Paperworker Union of Canada], NABET [National Association of Broadcast Employees and Technicians] in a number of parts of the world. So those are the folks who put up the lights and install the electrical cords and do all the crew work on a film set.

Status legislation the way it was written in Quebec cuts through those crew unions and declares some of the members to be artists and some not to be artists. And so the result is that in those unions or those associations which pre-existed the legislation, the legislation said some of them are included and some of them are not. And the result was that, you know . . . The producers yesterday were referring to some of the legal entanglements that we have seen going on in the province of Quebec right now. Some of those are rooted in the fact that the legislation cuts through existing associations.

So if you are taking our point — which you've heard from both the employers and now from the employees in the film industry — to do no harm and to not undo existing relationships, then you need to consider that the definition of an artist when it reaches into a crew, a craft union, is going to say the head of the art department, the head of the hair and makeup department, the head of the makeup department are probably artists and are captured by legislation. But the electricians, the builders, the drivers, and so forth are clearly not artists under a conventional artist definition, and would be excluded from the Act.

I think you can address that through a similar transition chapter that I just referred to. And you need to have a conversation with the one or two, basically the one organization that would be affected, which would be IATSE, the craft union, and you need to make a decision — you're in or you're out. You're all in or you're all out. Okay.

I think what you'll find as often in many jurisdictions that that union will prefer to be covered by labour legislation rather than status of the artist legislation, and they will ask not to be included. But I'm not presuming that. I'm just raising with you that status of the artist legislation has cut right through half of an existing association in the province of Quebec. It caused a lot of trouble. Okay, you need to address that in a transition provision if you don't want to create a whole lot of trouble in the film and television industry.

The third point I want to raise is the issue of who is the bargaining agent. And so I think the relatively simple point which is that if you're going to — as we are urging you to do — to recognize our union in both its local branch and national branch as having a first contract under provincial legislation in Saskatchewan, you need be careful about who's included, that we would also urge that the local Saskatchewan branch be authorized to choose its own bargaining agent which could include its national body, all right?

So if our Saskatchewan branch wants its bargaining to happen at the national table, that it can say under the statute, our bargaining agent is our national union. And then they just can stay in to this national contract that they've been part in for 40 years to the day. And that therefore you will not, you know, once again you won't be creating a statutory rule that has the effect of complicating or undoing a lot of good work that's been done both by producers and by ACTRA to build this relationship in those 40 years.

I also want to draw your eye to our brief which I'm going to not inflict on you because we'll give it to you in writing. It makes a couple of technical criticisms of the report that you're considering, and I wish to draw your eye to it. There's a couple of technical points there that we think you need think about.

So just a few concluding points. You had got into a bit of a discussion yesterday about the implications of status of the artist legislation for the status of artists as independent contractors. And you started to discuss some of the tax implications of going down this route. I just want to draw your eye to the fact that this doesn't need to be an issue at all, that it is possible, if you write the legislation right, for artists to be independent contractors for purposes of the tax code but to be dependent contractors for the purposes of status of the artist

legislation.

And there's a fair bit of the jurisprudence around this issue actually comes out of the oil patch in Alberta and the fact that this kind of precarious employment for multiply changing employers is also a characteristic of the construction and oil industries. And therefore this status of dependent contractor, of somebody who has access to some employment rights and could therefore be decreed by you to have access to rights under The Status of the Artist Act doesn't mean they can't be independent contractors under the tax code for federal and provincial purposes and therefore be able to write out things like the \$20,000 musical instrument that you were discussing with our colleagues from the orchestral folks yesterday. All right?

But certainly this issue of tax status is dear to our hearts and, you know, has to be got right so that when we go through the business of creating a right to an association that that doesn't put you into employee status under the tax code. And it doesn't have to be.

So if we were to address those points and a few of the technical points that we did, then I think you will find in ACTRA, both nationally and here in Saskatchewan, good friends of this initiative. I think potentially we could be big winners out of a well-crafted status of the artist legislation. We would not only have a strong national contract that is well negotiated and give us some good protection nationally, but we would also have that contract safely rooted in provincial law which it isn't currently — right? — even though labour law does ultimately prevail in labour relations.

And, you know, at the end of the day, and I guess this is my concluding point, you know, ACTRA in the 40 years we've been in this province and 64 years we've been working, we did achieve a national contract that allows people to get paid after they work. And we do have a pretty good benefits plan. And people who work in film and television and have the benefit of working under a contract do have a shot at a decent retirement. And we would welcome in principle and in practice the idea that other people in the arts would have access to those same benefits — benefits that they desperately need.

**The Chair:** — Thank you.

**Mr. Topp:** — That's our presentation.

**The Chair:** — Questions then? Ms. Draude.

**Ms. Draude:** — First of all, thank you very much for your presentation. Yesterday some of the gentlemen were talking about the fact that ACTRA only included some of the people that are in the film industry, and the ones that are maybe part-time or are just getting started, they're not included. So how would you be able to put them, how would they determine where they would be, if they're covered by the national Act or provincial?

**Mr. Topp:** — Well that's a very interesting question. I think the best way to answer it is to just tell you how it works. So ACTRA is a professional association as well as a union in its roles and you need to have worked for a while in the industry

before you can become a member.

So when an aspiring actor comes out of school and tries to get into the business, they are competing with people who are already in the union for gigs on commercials or in a film or television show. And somewhere along the line, lightning will strike and you will get the job because you're just, you're better than competing members in the union, and you will get your first job. Okay. And you have to pay a permit fee to enter the jurisdiction, and then you have got your first credit, and then you are into the association as an apprentice member. And then if you can work five more gigs like that, then you become a full member. So it's a little bit, in that sense, it's more like a professional association than a union. All right, then it is possible for people to be outside of the union and working to get in just like in any other professional association.

In terms of our scope, you know, our agreement is quite a broad agreement and we . . . There are some people in the film and television industry who basically don't want to be involved unless you're talking about a \$10 million film. We don't take that approach. We like to work with all levels of the industry. So in many parts of the country we have schools agreements where we work with schools and work with people who are going to be directors and producers in the future, and try to get them used to the idea you should pay your bills. There should be benefits. You should be contributing to people's pensions.

At the budget levels it is appropriate for micro-productions, right, and so that the costs associated with working with our outfit scale to the available budget available, and so pretty much, you know, most film and television is done through our agreement from the schools on out.

The other thing that you were hearing yesterday was there's a category of what they were referring to as non-union work, and they were saying that it's focused on this new reality television business that we've seen grow up in the last 5 to 10 years. It is true that a lot of that part of the business is currently shooting non-union, and the reason for that, to be absolutely frank with you, is because our contract wasn't a good fit for that kind of production. Producers basically were looking at the rates, at the rules built into our contract, and saying, this is just not going to work for a 150 to \$200,000 production and a show that is ultimately going to show once and then be gone like a piece of popcorn.

If he had had a bit more time, I think my good friend and colleague, Mr. Barrack, would have added that we've just finished a four-month bargaining extravaganza with the CFTPA [Canadian Film and Television Production Association], a week or so of which was involved in discussing that point. And we have written a new chapter in this contract that provides a 66 per cent wage discount for that kind of work, and significantly changes a number of the rules.

And both the producers and us are now hoping that most of that stuff is now going to be done inside the contract. And the basic reason why is because those producers want to work with our members. They want to work with professional performers. Why? Because that way they'll read the script, one take, two takes, you're done, and it's right — as opposed to 5 takes, 10 takes, 15 takes and it's still not exactly right.

**Ms. Draude:** — Yesterday our final presenters were very concerned that the Act would maybe put us in the same situation as Quebec is in where they fear it's actually cut down the number of productions and so on. Do you believe that if these changes were made that we wouldn't have the same problem?

**Mr. Topp:** — Well to the first part of your question: do I think the production has been chased out of Quebec because of status of the artist legislation? I don't think so.

I think it's a much longer story than that as to what's going on in Quebec. And there's, you know, quite a complicated situation going on in Quebec involving a series of existing Quebec-only unions and then a bunch of North American ones that are following service production. It's a big long story. And I don't think the Bill actually has much to do with what's going on in Quebec.

To your second question. The point I just made about this new chapter that we organized in our contract that provides significant pay discount, new work rules that are flexible and smart I think, and a rewrite of the back-end rules — John was referring to that yesterday, the way that residuals are paid and the fact that we have renegotiated all those to work for reality shows — shows that most of the time people in the arts are not negotiate smart, that people in the arts understand each other's budgets and understand what it takes, and that we are not in the business of putting the people we work for out of business, right, that actors want to work. And we need to find contract terms that work for the types of production that are in front of us.

And you know one of the reasons why I think you have this slightly unusual tableau of both the employer and the employees from an industry coming before you to say that their relationships work is because we are able to work it out.

**The Chair:** — Ms. Crofford.

**Ms. Crofford:** — Yes. Some of this is just clarity because that was a lot of information in a short period of time. And congratulations on your 40th anniversary. You don't look a day older.

But anyway I wanted to be clear. So in this particular circumstance you have within your agreement a subagreement. Now would you be in favour or not in favour of people who are under that subagreement going on their own if they wanted to and setting up their own bargaining unit to bargain the circumstances in that type of a work environment?

**Mr. Topp:** — Well we don't think that actors work being in a race to the bottom, and we don't think that actors win in a fragmented labour market across the country or in a province. And so, you know, slavery having been abolished in Canada, it isn't a legal requirement to be part of ACTRA, but you can't be both. You can't be part of ACTRA and simultaneously be trying to undermine our agreements by negotiating non-union or parallel union agreements on the side. So we ask our members to respect our agreement, and producers ask their members to respect our agreement. We just set up with rules of the game and away we go. So no, we don't favour fragmenting

the market.

**Mr. Bratt:** — Can I mention something in this regard? We're in a business where people choose to join it, and they work very hard to join it. And like I said, they love to do it. And as such, they're very vulnerable because somebody will say, well come and be in my film. And they'll say, oh I'll get exposure; this will be wonderful. And often they can be easily exploited.

So it's our concern to maintain the integrity of the organization and our agreements so that people aren't put at risk in that regard.

**Ms. Crofford:** — Yes. I think some of the old Hollywood movies remind us about that.

The next question is, do I understand correctly that what you're hoping would happen is the existing bargaining body would not have to go through a process of being recognized — but clearly it has been bargaining for 40 to 60 years in the national context — that it would just be . . . would it be certified? So it would become a legal entity in terms of being a bargaining body. Well I mean a legal entity in terms of this kind of legislation.

**Mr. Topp:** — Well if you go ahead with an associations chapter of status, the artists legislation in Saskatchewan, what you're contemplating is that artists will come together into an association, that they will define a scale agreement that they would like to achieve. They're going to get into a discussion with the engagers and that they're going to have ultimately a win-win agreement with the engagers in which they're going to agree with what the rules of the game are, and then they're going to be in business.

And basically what we're saying is we already have that and have had that for 40 years. Don't make us go through that exercise again in the provincial bargaining when we already have it nationally. So set up a deeming provision inside your legislation and simply recognize what's there. So recognize performers in Saskatchewan are represented by ACTRA, by agreement with the engagers. The performers and the engagers have a collective agreement that has been consensually bargained for 40 years and that's recognized under Saskatchewan statute as a valid statute for its purposes.

By the way, that's exactly what happened to Quebec in 1985. Our collective agreement was recognized as an agreement under the Quebec statute. Our national union was recognized as the bargaining agent under Quebec statute and the result is that we got exactly what I'm just talking about here. We didn't have to reinvent the wheel. We didn't have to start from square one. Everything wasn't all up in the air again and you didn't create a whole bunch of uncertainty which, just to be really blunt with you — you put the industry through two or three years of uncertainty about what these agreements are going to have, it's going to have a very direct effect on how much work happens in the province. So you don't want to do that.

**Ms. Crofford:** — We're short of time. I'm going to try to squeeze in one more quick one. So when a new person comes into a particular project into the workplace, would they automatically become part of this bargaining unit? For example, if you're in the public sector you automatically become part of

the union. Would you automatically become part of this structure?

**Mr. Topp:** — Yes, with an explanation. So on shows — and almost all film and television shows have agreements with us — anybody who wants to work on that set is covered by our collective agreement. And they can work on that collective agreement either as a member or a permittee.

**Ms. Crofford:** — Okay, thanks.

**The Chair:** — Mr. Iwanchuk.

**Mr. Iwanchuk:** — If I could just get some clarification on . . . I think you mentioned two issues and I think you said who is included. Would that be sort of scope issues that . . . So now I didn't understand when you explained how the Quebec model interfered with that.

**Mr. Topp:** — Well let me take you to Bill 40, which I gather is before the legislature right now, which includes under section 2 a definition of artist. So you seek here to define what an artist is, all right. Now I've carefully read this definition and I don't think it includes a construction worker or an electrician, okay. But construction workers and electricians are represented by two different unions in our industry, all right. The same unions do represent some categories of workers who clearly would be captured by this definition.

That's the point I'm making, all right, that this definition of artist reaches into some but not all members of the craft unions, okay. And so in effect the scope under status of the artist reaches into part of but not all of one of the bargaining units in our industry, all right. So you potentially end up in a situation with clashing statutes in which the same union that has a collective agreement, part of its members are covered by status of the artist and part of them are arguably covered by the Labour Code. Right. And that is a formula for a messy legal situation, right. It opens all sorts of complex issues. For example, when another union tries to get it to the jurisdiction and so forth, it makes a choice as to what statute it wants to work through and raises a number of issues that are real live issues in our industry because they're being fought out right now in Quebec between two craft unions. So I think you would be wise to recognize this is a problem. It's a transition issue.

In the film and television industry, you know, these kind of things don't happen very often. I bet you that there's only one or maybe two associations would be affected by this, all right. And if, as we hope, you go ahead with a good version of this, you must talk to that organization, to IATSE and to CEP NABET. And you need . . . If you go through this deeming approach — which we are recommending to you, which I think is nice and clean and simple and I think likely addresses many of the issues — they're going to need to make a decision, as will you, as to whether they're in or out.

I'd be willing to bet you, that they will ask to be out. But that's not for us to say; that's another union's decision to make. But I don't think what you want is you . . . I'm sure that they would encourage us to . . . If they were here, they would tell you they don't want to be half in and half out.

**Mr. Iwanchuk:** — Okay. But if we were to, as you stated with the collective agreements, accept that or accept your model and put them in, you have scope clauses under the agreements. Would that not take care of that problem?

**Mr. Topp:** — Well I think, if I understand your question correctly, it would only work if there were two agreements, right. You'd have a craft union, would need one agreement for people in the craft union that are covered by status of the artist and then with a scope clause that fits status of the artist legislation. And then, you would need a separate agreement with a scope clause that fits the Labour Code, okay. I don't think they would be very happy with that. I think they would prefer to preserve their bargaining unit and to bargain one contract.

So it's just . . . I didn't make a big thing of it in my presentation, okay. I'm just drawing your eye to it as it's become quite a meddlesome problem in Quebec, and you can avoid it just by being clear with that organization: you're in or you're out.

**Mr. Iwanchuk:** — Okay. Thank you.

**The Chair:** — Any further questions? Seeing none, then thank you very much for your presentation and your brief that you gave to us and again if we have further questions after our deliberations, I am sure you'll be available for our comments or questions.

**Mr. Topp:** — Thank you very much.

**The Chair:** — Thank you.

**Mr. Bratt:** — Thank you.

**The Chair:** — The next group to present is the Canadian artist representatives and Saskatchewan visual artists. If you could just . . . We've got some material that we're just distributing that you've given to us, and if you could just introduce yourself and begin your presentation.

**Mr. Close:** — Good afternoon. My name is Patrick Close. I'm a visual artist, and I'm also the executive director of CARFAC Saskatchewan. CARFAC stands for Canadian Artists Representation/Le front des artistes canadiens. I also happen to have served on the '92 committee and the two MACSA committees on the status of the artist.

CARFAC Saskatchewan is a non-profit, volunteer-based, provincial cultural organization representing visual artists in Saskatchewan. We're affiliated nationally with CARFAC national, with the CARFAC Copyright Collective, and internationally with the International Association of Art. We're certified by CAPPRT [Canadian Artists and Producers Professional Relations Tribunal]. Our national office is under the federal status of the artist legislation. Our mandate is to promote the well-being of practising visual artists in Saskatchewan, to enhance the development of the visual arts as a profession, to represent artists for the advancement of their common interests, and to assist artists with negotiations with individuals and institutions.

I'm going to be very brief. We'll summarize our position on the status of the artist as follows. We endorse the recommendations of the MACSA 2 report, which you have, with one exception. We support sectoral bargaining similar to the federal legislation rather than the membership-based bargaining which was recommended by MACSA 2. And I'll be using the term MACSA 2 for the minister's advisory committee on the status of the artist, second edition. We also endorse the Saskatchewan Arts Alliance position on status of the artist with one exception here as well. We support the establishment of a separate Saskatchewan commission similar to the federal legislation. We do not support the SAA [Saskatchewan Arts Alliance] recommendation to use the Saskatchewan Labour Relations Board. And we would draw your minds back to the presentation made by CAPPRT, the first presentation of these proceedings where they summarized the reasons for that quite succinctly.

We also recognize that there is an opportunity here for all regions of Canada to use the same commission, in other words, to contract with CAPPRT for those services rather than establish a commission in each province. That could be in an administrative agreement with CAPPRT.

We believe that it is of the greatest importance that legislation regulations which are brought into force in Saskatchewan harmonize with those of other regions. It is for this reason that we have generally supported the federal model, but we have emphasized the need to reinstate artist committees like the CACSA [Canadian advisory committee on the status of the artist], the Canadian advisory . . . sorry, I can't remember what it was. It was a group of artists who advised the federal process which led to the establishment of the Canadian artist code, and I can't remember what the acronym means right now. But that committee is essential to the operations of any sort of tribunal.

With regard to national agreements we support and endorse the recommendation 1.4(e) of the MACSA 2 [minister's advisory committee on status of the artist] report that the Government of Saskatchewan allow national artists associations to certify as representatives of Saskatchewan artists in enforceable collective bargaining in Saskatchewan. We're a little nervous about deeming procedures and putting a minister or a political process in front of this. We have talked to ACTRA about this, and I think the key to this is allowing the provincial association to decide whether or not they will become part of the national bargaining unit in terms of the national agreements. And I think that's been a little light that's come on in our heads about how this might be able to work.

Our sector of the visual arts is currently involved with collective bargaining federally. We're one of the first instances of new bargaining since the federal Act was proclaimed in 1992 and since CAPPRT was established. RAAV Quebec [Le Regroupement des artistes en arts visuels du Québec] and CARFAC are bargaining with the National Gallery of Canada to establish minimum rates and standards for visual artists.

I've given you a copy of the CARFAC minimum fee schedule. It's fairly extensive. You'll see it's some 40 or 50 pages long. We're quite well organized, and we have fees and schedules for all sorts of things, but we haven't had access to a collective bargaining process before.

Since 1968 we've produced this minimum fee schedule. The schedule began with recommended minimum fees for exhibitions in public galleries and has since been expanded to include commercial and non-commercial fees and royalties for reproduction including print, digital, audiovisual, and Internet use, projection, licensing, performance, creation, consultation, and professional fees. Although the CARFAC fee schedule has been in common use throughout Canada for almost four decades, there have been few, if any, formal voluntary agreements around the use of the schedule.

CARFAC has used policy, public opinion, protest, advocacy, persuasion, reasoning — all of these — as mechanisms to advocate the adoption and use of the fee schedule to establish industry minimum rates and standards.

We've produced and distributed model agreements, contracts, checklists for negotiation, health and safety checklists, guidelines for professional standards, advisory notes, workshops, and publications like this one — the *Visual Arts Handbook*. This was produced last Friday. And actually it took a few months. It didn't all come together in one day. But it's in the process of being distributed to all the libraries in Saskatchewan right now. There's three and a half thousand copies produced. They'll be distributed free of charge throughout the province.

It includes sections on contracts, what they are, how to use them, and how to negotiate, and what artists' rights are in the process of negotiation. The first 50 or 60 pages of this book are devoted to information about how to practice visual art as a business in Saskatchewan. This process that we're involved in right here in this room right now is at the bottom of page 41 if you want to look. It references the committee.

Now to illustrate where we are in the visual arts sector right now, you've all received a copy of Charley Farrero's letter where he speaks to his opinion on collective bargaining and whether or not it's relevant to him. We understand and respect his point of view. It may currently be shared by many artists in our sector. It's essentially, if something is not broken, why fix it?

Well we happen to believe that the status of the artist process has the potential to bring many positive changes to the lives of artists but only if we as artists will embrace those changes. We support the incremental model in the MACSA 2 report for artists' rights, which has been proposed in the MACSA 2 report, including the provisions for enforceable collective bargaining for the following reasons. The visual arts sector can no longer rely solely on goodwill voluntary agreements. Enforcement and compliance are growing problems and concerns for us. We value our fee schedules, which I've given you, and advocate their use by all public galleries and exhibitors, and we recognize it is time for us to formally negotiate the terms of these agreements with the engagers. It hasn't been done up till now. We've given these to them, basically said follow our lead.

We need access to collective bargaining. We value collective bargaining as an established, orderly process for parties to arrive at a negotiated agreement. We trust the process will result in fair, transparent, and workable agreements between parties.

We recognize the potential benefits of formal agreements which include not only fee rates but also establish working conditions and standards. But most importantly, the proposals which have been given in MACSA 2 outline a process by which our sector can progress developmentally, making changes when we are ready and in a manner appropriate to our artists and their practice.

I thank you for your kind attention and the opportunity to have made this presentation. And I wish you well in your deliberations, and I'd be happy to have any questions.

**The Chair:** — Ms. Morin.

**Ms. Morin:** — Thank you for your presentation here this morning. I'm curious about what you're referring to at the beginning of your presentation and that was we've had now some groups saying that they would prefer the adjudication process to be dealt with through something like a commission or the tribunal. We've had some say no; they're pretty adamant about using the Labour Relations Board. And you're saying that you would prefer not to use the Labour Relations Board.

I'm wondering if you could give us some more meat as to the decision-making process. You know, what are the pros and cons in your mindset?

**Mr. Close:** — CAPPRT outlined those pretty well in their presentation. We feel that a body like CAPPRT has more experience with the arts, that there are certain things about the arts which are different from normal labour relations. And we feel that a body dedicated to the arts would be more responsive to them.

If cost is a factor and we can't afford that, we would secondly look at a subagreement with CAPPRT, some sort of administrative agreement so that they could bring that expertise to bear on the provincial sectors, which they haven't done up till now.

And thirdly, we would, we would accept the decision to use the SLRB [Saskatchewan Labour Relations Board] if those other two options weren't open to us. But our preferred one would be: first, to have our own commission; secondly, to have an administrative agreement with CAPPRT; and thirdly, to use the SLRB. CAPPRT offered yesterday to be able to help whatever mechanism we put together come up to speed.

I think the most important thing is that there be a mechanism to deal with artists' concerns and these certifications which will be sensitive to our sectors. What name is on it really doesn't matter too much to me or to our members.

**Ms. Morin:** — So further on that point, your first recommendation would be to have our own commission or something to that effect. I'm curious. Do you have any sense as to what level of activity they may engage in? Do you think this is something that there will be a lot of uptake on for that commission, or what are your feelings on that?

**Mr. Close:** — Initially I think there will be a flurry of activity, as ACTRA has said. And then I think it will die down, and there will be a few cases come before them, perhaps, during a year.

We can look at CAPPRT and the number of people, number of organizations that they handle — the number of organizations and engagers that they handle — and get some sense of the flow.

It would depend too on how long the agreements were for and whether or not there was any . . . [inaudible] . . . It's been noted already by other presenters that the arts tend to bargain fairly collegially, that they're not in the business of trying to put each other out of business. So often agreements are reached quickly and easily. I shouldn't say that, ACTRA having gone through a four-month procedure. I'm not sure that that was quick and easy or not.

**Ms. Morin:** — One might hope.

**The Chair:** — Any further questions? Mr. Elhard.

**Ms. Draude:** — Thank you for your presentation.

**The Chair:** — Ms. Draude, rather than Mr. Elhard.

**Ms. Draude:** — When I'm looking at the fee schedule, do you believe that if a collective bargaining is in place, that that fee schedule will increase?

**Mr. Close:** — I would think that it's in the nature of all human endeavour that there's an inflation, inflation in labour cost built in. So I don't think it would be an instantaneous process that it would increase. But over time I think minimum wages increase, standards increase, all things, cost of living increases. So I would not see it as frozen in time. I would see it as being negotiated on a regular basis, and there might well be increases. There might well be decreases as well.

The fee schedule has recently radically changed, and a number of the categories were actually brought down as a result of engagers coming to us and us looking at a different method of organizing the engagers into the contract schedule.

There are also provisions and precedent in CARFAC for negotiating subagreements which may be more or less. As such, a subagreement was negotiated within the last calendar year by CARFAC Saskatchewan who actually met with OSAC — we've talked about OSAC, the Organization of Saskatchewan Arts Councils — because the touring schedule that appears in this fee schedule is more appropriate to large exhibitions organized in Toronto or at the MacKenzie Art Gallery, things like that, with perhaps three or four venues a year.

They didn't anticipate when they wrote this schedule that OSAC was there and had 12 exhibitions a year times I think 20 different exhibitions that they circulate. They didn't anticipate that level of touring ability. And we met with OSAC. They told us the problem. We, together with OSAC, put together an agreement and CARFAC Saskatchewan actually went to CARFAC national and bargained on behalf of OSAC for a specific fee schedule which is applicable to OSAC's touring arts program.

And that was in the interests of maintaining the program with no cuts in Saskatchewan, and it's of course OSAC's business to keep their budget at the rate that will support that at the amount

they had indicated they were able to pay and we had negotiated for them with. But it was an interesting turn of events to have us as an artist group actually advocating on behalf of an engager with a national body.

Now this is all voluntary, totally voluntary. There's no constraints on us or on OSAC to follow these, but some five or six years ago we had met with them and said, we would like to see you paying artist fees at the CARFAC level. And they agreed, and they worked towards that. They attained it, and then when the new fee schedule came out and it was too high, they came to us and explained the situation. We went to our national body, explained the situation, and now we have an agreement with them which . . . They're not outside of the intent of our agreement which is to provide fees at a reasonable level, but they've been adjusted to reflect regional concerns.

**The Chair:** — Thank you. Ms. Crofford.

**Ms. Crofford:** — Yes. I'm wondering now what would be the impact for your sector, whether or not these schedules apply to government engagers.

**Mr. Close:** — Of course government is an engager like any other. There are some interesting wrinkles in the Copyright Act. The Copyright Act reads that whenever a commission is done that the rights, without prejudice to the rights of the Crown, will go to the commissioner of the work under certain circumstances. But the Crown is an engager similar to all others and I think it's the intent of The Status of the Artist Act that it apply to the Crown as well.

**Ms. Crofford:** — Now when the Crown contracts with someone to deliver a service, let's say, for example, a media firm or advertising — something that involves a component from your sector — would the government or the contractor then be held accountable for the people who are subcontracted to receive the payment according to the fee schedule?

**Mr. Close:** — I would anticipate that such a situation would depend on the terms of the contract. I don't think there would be any rights of the Crown that would override the contract, but I'm not a constitutional lawyer and I'm not a lawyer either. But it would have to be set out in the contract as to what the liability of the other parties that were subcontracted would be.

We're aware that there's a situation in procurement here in the, through Executive Council where the work of photographers in particular is the agreement, just to get on the procurement list a photographer must cede all their rights to their work before they're even put on the procurement list. No one else is asked for this. This is unfair and we'd like to be able to be in a position to bargain that with the Crown. And I think you'll be hearing from the photographers later during these proceedings and I won't try to summarize their case for you.

**Ms. Crofford:** — Thank you.

**The Chair:** — Thank you. Mr. Elhard.

**Mr. Elhard:** — Thank you, Madam Chair. Mr. Close, you and I have had lengthy conversations about this over the last couple of days and I won't drag you back into those conversations. But

something you said has prompted a question in my mind. Have you as a participant in the arts community watched with some interest and awareness the role of the professional relations tribunal on the national front? Have you seen them work? Have you seen the results of their work? Have you been an observer of that? And do you have an opinion on the, sort of, the quality of work that they've been able to achieve on behalf of the arts community?

**Mr. Close:** — I do. And I would say that this is my personal opinion and not that of my association. I've watched with great interest since the formation of CAPPRT how they've gone about it.

There's some excellent documents on their site that they've produced. There's a federal Status of the Artist Act which is annotated with examples of jurisprudence having been applied to the Act which is an excellent tool when you're researching information about this. Their legal counsel and their executive directors have been of the highest quality.

It took them a while to figure out that there were provinces. I can remember that they came here and gave their presentation on what they did and how they did it. And a number of us in the audience said, but where is the link to the provinces? And they were a little astounded and they said, what do you mean? And we said, well this is a labour responsibility and labour is constitutionally the right of the provinces except the Canada Labour Act which is federal. So the bulk of this work is going to be done in the provinces and the bulk around status of the artists will be done by provincial legislation. So where is the link between you and them? Well the next time we saw their PowerPoint, which was a few months later, there was a link. They'd taken up the challenge. They'd figured it out. And I think yesterday they came in saying, we're there, and we understand the process now, and we're ready to work with you.

So I think they've been at the highest calibre since day one and they've improved. The situations that they have dealt with are all on their website. You can go in and read the cases. There have been a few individuals who have gone before them with difficulties of representation. They've made rulings on those, and I think they've carried out their work fairly well.

If I had any criticism at all, it would be that they had a fairly narrow scope to their world view when they began. Now that's normal. They're a federal agency, and they had a task to do, and they focused strongly on that task. But I think they've lifted their head from the task a bit, and they've seen the world around them a bit now. And we can expect to have some co-operation from them in the future about developing status of the artist regulatory envelopes in all the provinces.

**Mr. Elhard:** — I know that there is at least two different concepts as to how this type of arbitration work might happen or adjudicative work might happen. And I was the one I think that asked if the national tribunal might make themselves available to Saskatchewan on a loaner or contractual basis. And given the learning curve that they've gone through as described by yourself and the effectiveness of their work over the last number of years, from your perspective again as an individual, possibly, would you say that having their expertise available to us might clearly expedite this whole area for the province?

Might their knowledge, might their skill, might their understanding of this particular area really lend itself to clean and quick resolution to some of the issues we're dealing with here today?

**Mr. Close:** — Very much so. I think that they would inform the transition process that's been referred to by the previous presenters to a very great degree, and I think they would be invaluable in that. At what level you chose to involve them, whether as an adjunct to a standing committee on the status of the artist or as an adviser to the minister, I think they would be quite valuable.

I have to caution you here though that the reason the MACSA 2 report was so well informed and brought so many things before you is because it was essentially an interagency co-operation — Justice was involved, Labour was involved, and Culture. And having this person working with one minister, having CAPPRT work with one minister might constrain them a bit in their effectiveness. They might well have things that could inform Justice, that could inform Labour and other jurisdictions.

So whatever mechanism is set up, it would be helpful if it did interface at several different levels. And as we know, most departments are siloed. The information moves up and down, but rarely, rarely transversely. So that was one of the really wonderful things about the working arrangements around status of the artist, is that they've transcended some of those boundaries and worked well across, between departments.

**Mr. Elhard:** — I want to ask you the same question I asked one other presenter group yesterday. Given all the potential areas of usefulness to the artist and the arts community, given the prospect of improved taxation considerations or just other issues that might enhance the well-being of the arts community in Saskatchewan, is it the impression of CARFAC and its members that the collective bargaining opportunity is the primary method by which those ends can be achieved?

**Mr. Close:** — That's a very difficult question and needs some reflection. Our members would be diverse in their response to your question. Some would place it high and some would place it low. We feel that it is nothing more than a mechanism. And it's a mechanism to achieve some of the aims and goals of the sector, the visual arts sector. And as a mechanism, we feel it is valuable and probably would rank in our top 10 of mechanisms that we could see that would help that.

What we want to do is to see visual artists live and prosper here and make adequate incomes and contribute to the social and economic fabric of the province. And we feel that it's a valuable mechanism that can contribute to that.

But we wouldn't place it above those goals. No, because those goals of contributing and being part of the society here, and living and working here, are much more important to us. We just see it as a piece of machinery or a mechanism that we can use to achieve those goals. So I hope I've answered your question in some sense, at least.

**Mr. Elhard:** — You have. I guess my next quick question would be: what are some of the other mechanisms that your membership would really like to see available to them in order

to achieve the prosperity we're all desirous of seeing?

**Mr. Close:** — Those have been listed quite well in the 1992 report of the Saskatchewan advisory committee on the status of the artist. There's 114 recommendations in that report. They've been echoed in the two MACSA reports as well. But they have to do basically with access to benefits, with access to funding, with access to tax.

There are some things that are outside of your jurisdiction, federal tax law for instance, income averaging, things like that, and they've all been listed and it's too long for me to list in the minute and a half that I've got left. But I can provide the committee and the researchers with that list of things.

**Mr. Elhard:** — I don't think we need 114, but maybe you could identify three or four other than the ones you've just talked about.

**Mr. Close:** — Beyond the ones of taxation relief and benefits? And no, not at this time I couldn't. Not to be fair to my sector. I'd have to go back to them and ask.

**The Chair:** — So to be clear then, are we asking for Mr. Close to do that on behalf of the committee?

**Mr. Elhard:** — Well if he has readily available information that isn't going to require a lot of extra work, if he could identify it quickly I would, I'd like to see some of that.

**Mr. Close:** — I'm prepared to list about a dozen right now. Is that . . .

**The Chair:** — Go ahead.

**Mr. Close:** — Economic equity around industry standard rates, payment guarantees and bankruptcy protection, copyright and intellectual property concerns — the support for development in these areas. Pensions, grants, provincial and federal taxation, municipal taxation, unemployment insurance, social assistance, those are just some wrinkles that have to be ironed out. Basic incomes around collective bargaining rates, minimum labour standards, workers' compensation, occupational health and safety, housing and workplace issues for live-work studios, insurance, dependent care, education, training and professional development, visibility, legitimizing our work — that's called the status of the artist — access by rural communities and other people to art, minority rights and non-discrimination, and collective rights.

And I think if you took any citizen in the province of Saskatchewan involved in any group, they would have a similar list of social concerns.

**Mr. Elhard:** — Thank you very much.

**The Chair:** — Thank you. Seeing no further questions then, thank you very much for your presentation.

**Mr. Close:** — Thank you.

**The Chair:** — Our next presentation is by an individual citizen, Mr. Wagner.

**Mr. Wagner:** — Good afternoon.

**The Chair:** — Good afternoon.

**Mr. Wagner:** — I have some notes and remarks and I made copies if the . . .

**The Chair:** — Certainly. If you just want to walk us through your presentation, that would be great.

**Mr. Wagner:** — Thank you, Madam Chair. Thank you to the committee and the members for the opportunity to appear and comment on the important work you've undertaken. At the outset I want to congratulate the Minister of Culture, Youth and Recreation for bringing forward the Bill the committee is considering. I think it's fair to say that after all of the consultations, all of the presentations, analysis and so forth, that the time has arrived to give actual effect to measures designed to improve the status of artists working in Saskatchewan.

By way of introduction, I'm currently the general secretary of Grain Services Union — I'm not an artist — which is an elected position. I've held this post since 1977. In addition, since 1995 I've been privileged to be a labour representative on the Saskatchewan Labour Relations Board. And prior to the appointment to the board, I represented unions in Saskatchewan on the committee chaired by Mr. Ted Priel which was charged with recommending changes to the Saskatchewan trade union Act.

My reason for asking to comment on Bill 40 stems from GSU's [Grain Services Union] commitment to contributing to collective efforts to improve the socio-economic circumstances of all citizens, particularly those amongst us who work often in tenuous and non-standard situations and economic relationships.

Recently GSU made representation to the commission on improving opportunities for Saskatchewan residents and to the Arthurs Commission which examined federal labour standards in part III of the Canada Labour Code. Both of those commissions acknowledged the need to address non-standard forms of employment or work with a view to ensuring the dignity of labour is given bona fide meaning and genuine recognition through legislative and public policy initiatives.

Bill No. 40 represents an opportunity to meet those objectives on behalf of professional artists who as a distinct part of our community do so much to contribute to the health and vitality of our society but who all too often toil in circumstances that are uncertain and woefully inadequate. The minister's advisory committee on the status of the artist covered a wide range of subjects integral to the improvement of conditions for artists, and I commend the committee for its work. My purpose in appearing is to speak to the subjects of labour relations and collective bargaining as it pertains to professional artists in Saskatchewan.

I support the submissions and recommendations made to this committee by the Saskatchewan Arts Alliance in relation to collective bargaining rights for professional artists. In addition to the alliance's collective bargaining recommendations, I propose that the Human Services Committee give consideration

to amending the Saskatchewan Labour Standards Act to include professional artists as defined in The Status of the Artist Act. In addition I suggest that Bill No. 40 be amended to include reference to the inclusion of professional artists in The Labour Standards Act.

With respect to the question of establishing collective bargaining rights for professional artists, I recommend that the standing committee carefully consider the provisions of the Saskatchewan construction industry labour relations Act of 1992 and the federal Status of the Artist Act, also of 1992 although proclaimed in 1995, with a view to adopting demonstrably workable legislation so as to enable professional artists to gain access to and to actually realize the fruits of their labour through the time-honoured process of collective bargaining. I'm probably revealing my bias in that connection.

In addition to examining The Construction Industry Labour Relations Act and the federal Status of the Artist Act, I recommend that the standing committee commission a labour relations expert to examine the various aspects of collective bargaining in the arts sectors with the express intent that she or he would report back to the committee with specific proposals before the Assembly rises for the summer.

I've listened to your discussion with previous presenters, and there's been discussion about whether to use the federal tribunal, whether to create a separate tribunal, whether to send things to the Saskatchewan Labour Relations Board and have it adjudicate these matters. And it seems to me that an examination of the feasibility and the logistics of each of those prospects is probably in order before the decision, the final decision is made to go one direction or the other.

The mandate of the labour relations board, expert approach that I'm recommending would be to design the steps necessary or measures necessary to effectuate sectoral collective bargaining for professional artists as independent contractors, to determine the quasi-judicial tribunal appropriate to the situation — although I wish to make it clear that from my perspective, the Saskatchewan Labour Relations Board is an appropriate or the appropriate tribunal — to advise on the provisions necessary to protect professional artists from anti-combines legislation, and to protect the income tax status of professional artists.

I think it is essential to ensure that an amended status of the artist Act recognize, respect, and protect national collective agreements between artists and engagers. Furthermore, an amended Act should provide for recognition of the current collective bargaining agents representing professional artists within their sectors. And an amended Act should facilitate access to representation in collective bargaining for those professional artists who are currently unrepresented.

With respect to the 2002 Act, I recommend that section 6 be amended by deleting the words, "as far as it considers it reasonable and appropriate to do so," where they appear in the opening sentence of the section. It's my respectful submission that reserving a unilateral power to avoid or nullify the undertakings of section 6 of the Act is contradictory and contrary to the intended purposes of the legislation.

With respect to Bill No. 40, I recommend that the proposed

amendments to section 2 be amended by clarifying the definition of artist to read as follows:

"artist" means any individual who, as an independent contractor determined to be professional under the criteria set out in paragraph (b):

(a) creates, performs, gives creative expression to or works in any artistic field, including all or any of the following:

And then the various categories is now set out in subsection (i) to (v) of Bill No. 40. And:

(b) an independent contractor is professional for the purposes of paragraph (a) if the independent contractor is paid for the display or presentation of that independent contractor's work before an audience and is recognized to be an artist by other artists; is in the process of becoming an artist according to the practices of the artistic community; or is a member of an artists' association.

Now consistent with that recommendation, I suggest that section 3(a) of the Bill, of Bill No. 40 be further amended by deleting subparagraphs (b), (c), and (d), since if you adopt a more streamlined and concise definition of an artist, the other terminology I don't think is needed and may actually clutter the matter.

And finally, with respect with the definition of engager in section 3(b) of Bill No. 40, I suggest the words appearing after "artist" in the second line be deleted since they are potentially confusing and do not actually add to the definition. The first part describes what an engager is. I don't think the additional caveats of qualifications are needed. In effect an engager is someone who employs an artist or artists.

Thank you for your time and patience. And I'd be pleased to answer any questions you might wish to ask. You're going to ask, what does a crane has to do with art. I was trying to think of an artistic way to save all of those old crib elevators, but . . .

**The Chair:** — We have a lot of them in our gift shops in various iterations that are quite lovely . . . [inaudible interjection] . . . Yes, exactly, I have one of those. Thank you very much for your presentation, Mr. Wagner. Questions. Okay, Ms. Morin, you have a question.

**Ms. Morin:** — Sure. I mean, there is some to-ing and fro-ing on one issue specifically that you've already touched on and that is to who is going to be the adjudication body.

And the reasons that we've heard so far is that for people that wanted to go to either CAPPRT or a separate commission is because of the depth of knowledge it would have with respect to the arts community. For people that wanted to go to the LRB [Labour Relations Board] it's more so with respect to setting up another quasi-judicial body and the amount of funding that would need to go into that.

So now you're advocating the LRB as well. Do you feel the LRB . . . I mean, you're also a participant with the

Saskatchewan Labour Relations Board, so do you feel that there would be a depth of knowledge in the Saskatchewan Labour Relations Board that could allay the fears that there is not that depth of knowledge with respect to the arts community specifically?

**Mr. Wagner:** — Well I think the board could be brought up to speed very quickly because what would accompany that initiative is, I think people from the arts community — both on the engager or employer side and on the artist side — should be appointed to the board as representing their particular field of interest. They then bring the expertise that, when you couple it with the labour relations expertise of board Chairs or Vice-Chairs and the administrative staff of the board, you I think very quickly marry the two concepts and you develop the resident knowledge. And you have indeed professionals there who are familiar with the variety of issues and circumstances that apply in the arts community.

To give you an example, the Labour Relations Board as it's currently composed has a Chair and two Vice-Chairs. One of those Vice-Chairs was actually added to the composition of the board following the proclamation of The Construction Industry Labour Relations Act to facilitate the specific procedures related to the construction industry. And it has worked very well. So I think you can dedicate the resources.

But the board is also composed of practitioners from business and labour who bring a background and areas of expertise from both sides of the collective bargaining table, so to speak. And they cover a broad range of occupations, trades, public and private sector, and so forth. So that model I think works very well.

And one of the greatest advantages it would have, in my opinion, is that it is accessible. The cost is minimal. The cost associated with travel to make applications, present complaints and have complaints adjudicated is minimal. It's based here in Regina and Saskatoon. It does not charge fees for the adjudication of matters brought forth. And it has, because what you're really talking about is regulating industrial relations or collective bargaining, and that is its area of expertise.

If we're talking about matters of funding of the arts or creating other economic supports and conditions for a more prosperous arts community, that's different than the simple matter of adjudicating and regulating labour relations.

**Ms. Morin:** — Thank you. I appreciate that answer. So what you're saying is that by having representatives from both the employer and the employee groups within the arts community, you would have that depth of representation there with respect to being sector specific. Yet you would still have the depth of knowledge with respect to the labour relations issues themselves because that's what they do on a full-time basis.

**Mr. Wagner:** — Absolutely.

**Ms. Morin:** — Okay. Thank you for that.

**The Chair:** — Ms. Crofford.

**Ms. Crofford:** — Welcome. One of the presenters

recommended that we would give existing recognized organization the option of being under the status of the artist or under regular provincial collective bargaining, and the particular union mentioned was IATSE because there was a concern about splintering existing bodies that represent certain elements of the business. And I'm just wondering if you have an opinion on that.

**Mr. Wagner:** — Well certainly I think it would be for IATSE to speak specifically to that question. But it seems to me that covering them under one piece of legislation would give them the security and stability that they'd be seeking without having to, if you will, reapply for certification every time a new constellation of capital is put together to produce a movie and so forth. They are professionals. They do practise a craft and they participate very directly in the artistic endeavour.

Now there are other situations however where members of IATSE are employed by a specific employer. The Conexus Arts Centre comes to mind where IATSE members are employees of the Conexus Arts Centre. But within the status of the artist realm it would seem to me that anything that bolsters their stability and security is a positive, both for the industry and the people who make their livings off it.

**Ms. Crofford:** — So you could, without disturbing their internal relationships, still capture them under the broad umbrella.

**Mr. Wagner:** — You could. You might want to examine for example in the construction industry, you will have building trades unions who are certified by sector, let's say boiler making or iron working or sheet metal working. At the same time those unions do have individual certifications with what I'll call commercial employers. So if it's a painting shop in Regina that, you know, focuses on dwellings or small structures, there might be a certification with the painters' union with that specific employer at the same time as the painters are certified for the painting industry in the general construction industry for the painting component. So there are examples where you get that duality.

**Ms. Crofford:** — Thank you.

**The Chair:** — Seeing no further questions, thank you very much for your presentation.

**Mr. Wagner:** — Thank you.

**The Chair:** — And in contrast to yesterday's agenda, we're ahead of ourselves. So we now have . . . We don't have any of the presenters that we could move up, so the committee will now be recessed until 3:30.

[The committee recessed for a period of time.]

**The Chair:** — Welcome back to the committee members and to the presenters. Our next presenter up before the committee is the Saskatchewan Publishers Group. Welcome. We do have some information that's just been passed around that you've distributed for us. And if you could just introduce yourself and walk us through your presentation.

**Ms. Niskala:** — Thank you. What I've given you is essentially my speaking notes although I will abridge them, of course, as we go along. I'm Brenda Niskala. I'm the co-executive director of the Saskatchewan Publishers Group. I have been working with the publishers in this province for 15 years.

I would like to just introduce to you a little bit of information about the publishing community in the province. We represent about 65 publishing interests. I use that word because some of them are, most of them are publishers — over 60 are publishers, but we also have printers and publishing services as part of our membership. A pretty vibrant community distributed about one-third, one-third Saskatoon, Regina, rural if we can call places like Prince Albert and Wynyard rural. I don't know. I'm from a farm originally so I consider that not so rural. And they produce books in over 10 languages and dialects, so they're pretty vibrant in terms of their cultural product as well.

Saskatchewan produces over 100 titles a year — new books a year — and out of those, we currently have about 1,000 in print, over 1,000 titles. You can find out a little bit about those if you ever wanted to drop by our office on 11th Avenue. You're welcome; we have a bit of a storefront there and we're pretty proud of it and all those books are there on display, as well as on our website. Also on our website is an archive of all the books written and published in Saskatchewan since 1905 and you can search any book you want there. If it's missing, you should let us know and we'll make sure it's included. That was a bit of our centennial project for us, along with the library association and a few other people.

We're also one of the founding members of the Saskatchewan Cultural Industries Development Council, which is the voice for film, sound recording, craft, visual arts, and book publishing in the province. We're an affiliate of the Association of Canadian Publishers, which is the national association that represents Canadian-owned book publishers. There are other associations that represent branch plants — what we call in the industry branch plants — which are non-Canadian-owned publishing interests.

Regarding the collective bargaining aspects of the proposed legislation, we welcome the stability and the reliability in contracting that this kind of negotiation would inspire. Currently in book publishing, the Writers' Union of Canada has been certified through the CAPPRT to represent writers' interests in publishing and of course the ACP [Association of Canadian Publishers] as a place that we are affiliated with represents us nationally on the publishers' side.

So the set-up is there to move ahead nationally with negotiations that have never taken place actually. There have been preliminary meetings. There have been models and guides produced by the writers' union, and there have been discussions. But nothing has pushed ahead to the actual negotiated collective agreement, which is fine by us at this point. We're happy to just evolve in our own good time.

And the thing that we would see about writers getting more involved with the collective bargaining situation is that it would educate them so that we didn't have to as book publishers. And they would understand then what their rights and obligations were contractually. And it would just make everything so much

more focused on the art and the cultural aspects of what our work is.

Right now book publishers often leave the design of a publishing contract to something that they created from somebody else. So I often, as the association office, get a phone call from somebody who says, do you have a royalty agreement? Do you have a distribution agreement? Do you have a . . . And, you know, I do, you know. So they take it, and they cross out the names and they put somebody else's names. And that's not good practice.

The other thing is that if they have the money of course they will hire a lawyer to crib the agreements. And I used to be a lawyer, so I know that lawyers take the agreements and cross out the names and so, you know, so it's . . . [inaudible interjection] . . . Yes, it's not that much of a secret. Anyway so it's not, right now the contracting situation in publishing isn't great. We're not particularly happy with it as an industry and we are pleased to see nudges moving us in the right direction.

There's also the things that cover the rights and obligations of the writers. It also protects publishers from things that go wrong. And lots of things can go wrong. A writer might not deliver. They might have libellous content. They might have serious errors. They might have plagiarized. You know these kinds of things are covered off in a publishing contract typically, but it would also be something that would be subject to a standard kind of agreement that would come through collective agreements.

Because we already have a set-up nationally, we see that as a good place to start and a good place to rely on this initiative in most respects. The certification of CAPPRT is something that we've been following with interest. And the one thing that we'd be concerned about if we were dealing only on a provincial level is that Saskatchewan could very well undermine what's happening nationally.

It's really important for book publishers to be able to negotiate nationally. We get writers from across the country. We also get writers from everywhere in the world really for our books. So to have a different scale provincially would leave our publishers at a serious disadvantage. And let's face it: we need all the advantages we can get in this province because we are in the middle and we don't have the big population bases that provide the sales levels that we need to make a go of it. So we do depend for our sales and livelihood in book publishing on being able to take our books not only in province but also to larger population areas.

Obviously we're supporting then sector bargaining and we'd be looking at something that would enable future agreements negotiated by our national colleagues to be respected.

Finally, the definition of engager in the proposed legislation has raised a few questions for us. Book publishers license the right to publish literary material. So we're all about rights. We're about, you know, copyright, subsidiary rights, you know, permission for use, and that's not clearly outlined in the definition of engager.

To engage in an enterprise that circulates or disseminates

artistic works doesn't . . . I'm not sure. We just weren't sure. We just put a question mark beside it. We're not sure if that covers what we do.

Also though the definition of person would have to be, we'd have to make sure that covered a really broad spectrum of activities. In Saskatchewan we have book publishers who are for-profit, not-for-profit, partnerships, sole proprietorships, educational institutions, art galleries, co-operatives — you name it — and they all publish books in this province.

And then again there was the phrase primary or secondary activity that raised a flag for us. Does that mean that engagers like IPSCO, the corporation that just hired a writer to write their history — that nice, big, fat history which I'm hoping some of you have seen by Dave Margoshes here in Regina — would that mean that they're not an engager because it's not their primary or secondary activity? That's not clear.

Also maybe a bit closer to home, but a university department or an art gallery. Obviously that's not, publishing isn't their main purpose so would a book that they publish be out of the scope of this legislation? So I know I'm supposed to be answering questions, but I'm asking questions.

At any rate, my executive left me with this thought when they knew I was coming here. They said, we're artists too and we support anything that will help the artists in this province gain a worthy livelihood. And so we're looking forward to seeing this legislation move ahead and we're very pleased that it's happening.

**The Chair:** — Thank you very much. Questions? Ms. Crofford.

**Ms. Crofford:** — Yes, I want to explore with you a little more the question of primary and secondary. So it would be your view that there shouldn't be a differentiation, that if you in any way touch publishing then you should come under the rules for that sector.

**Ms. Niskala:** — I think that the . . . it will be difficult to determine who would fall under this particular legislation the way it's worded now.

**Ms. Crofford:** — You don't have a recommended wording?

**Ms. Niskala:** — It seems to me that if you are producing a book then you are acting as a publisher. And it may be the very first time you do it and it may be the only time that you do it but I think in fairness . . . The way that this is worded, I guess if one were to be somewhat less than straightforward, one could theoretically start up a bunch of different companies all with different goals and objectives and hire writers to do a contract from the various companies and it wouldn't be covered, you know — if one wanted to escape the rules and conditions and the obligations involved.

**Ms. Crofford:** — So the objective being to capture all of that activity.

**Ms. Niskala:** — Yes. Yes.

**Ms. Crofford:** — Okay. And I must say that I am somewhat

subject to sliding off into other thoughts occasionally, and I can't remember if you really addressed the question of whether it should be adjudicated by the Labour Relations Board here or whether some other process is needed.

**Ms. Niskala:** — I didn't do that in my words, but in the written brief I do just very briefly suggest that it seems that the Labour Relations Board, it seems to us that the Labour Relations Board could handle it.

**Ms. Crofford:** — Yes. Okay. That's it for me, Madam Chair.

**The Chair:** — Ms. Morin.

**Ms. Morin:** — Sorry, but my line of questioning is also similar just because I have to say it was very interesting for me in terms of information that we received from your report with respect to the definition of an engager. I don't think I would have stumbled across that had you not provided us with the examples that you did, especially one glaring example that we won't mention by name but . . . So I thank you for that because I certainly wouldn't have stumbled across that had you not made that such a glaring example. And I thank you for your report. It's very concise. It's very clear and easy to understand. So I just want to express my thanks for that. Thanks.

**The Chair:** — Mr. Iwanchuk.

**Mr. Iwanchuk:** — Yes. You had mentioned sector bargaining. Were you sort of . . . In reference to the national field is that, I mean, is that where your sort of experience comes from to, or could you maybe talk to me about what you would mean by sector.

**Ms. Niskala:** — Well the book publishing and writing people have been contracting and having other kinds of arrangements for many years on a, you know, contract-by-contract basis and so that's the sector I'm referring to. And because the national associations that represent our activities are affiliated under the, or certified rather under the CAPPRT, at least on the writers' side, and certainly because the Association of Canadian Publishers has entered into discussions with the Writers' Union of Canada, there's some work already done.

**Mr. Iwanchuk:** — Okay, but I guess this sort of leads into the definition because if you define sector like you see, you know, who are the engagers and who is the sector, so . . .

**Ms. Niskala:** — In writing there are . . . It's pretty clear for people who are in publishing, but there are two national associations essentially, in book publishing, who would be the engagers, the primary engagers in book publishing: the Association of Canadian Publishers and the association that represents branch plants. And in writing, there are two associations in the English speaking side. And those are The Writers' Union of Canada and the League of Canadian Poets. And they have worked together and are certified under The Writers' Union of Canada. So that would cover most book publishing arrangements in the English language.

**Mr. Iwanchuk:** — Thank you.

**The Chair:** — Ms. Draude.

**Ms. Draude:** — Thank you for your presentation. You'd indicated that there was about 100 books a year published in Saskatchewan. And you said that you have about 65 people that are publishers and/or writers. How many of the 65 are both?

**Ms. Niskala:** — Are both publishers and writers? About two-thirds. About two-thirds, and so a lot of these publishers are small and they don't publish a book every year. We have 13 full members who have a fall and a spring season and they publish anywhere between 6 and 18 titles a year each. So, you know, we have everything from, you know, a really big going concern to, you know, one book every three or four years.

**Ms. Draude:** — When I read your brief and think of the people that are both publishers and writers, then they would be their engager too.

**Ms. Niskala:** — Yes.

**Ms. Draude:** — And it's pretty difficult to be your engager, and supply whatever you might need to be able to have this a real contract. So when you say that your group is in favour of it, what do they see would be the big benefit if they are both the engager and the artist?

**Ms. Niskala:** — Well I mean obviously for the people who hire or contract with writers who are not themselves, if you follow me, they see that as stability and so on. But for the people who are working with their own books — which is about, probably in any given year probably about 10 per cent of the books that come out — these are also people who also some day hope to have contracts with other publishers. There's a stigma attached to being self-published even today, even in this world of print on demand and all the other technological advances, because once you've worked with a professional editor, then you have a bigger stamp of approval.

And so many, many publishers, most of the publishing houses in Saskatchewan, they started out with people who were publishing themselves, and then they branched out to publishing other people. And the people were publishing themselves, and that house got published by their neighbours down the road. So it's all kind of everybody's published everybody else in this province. Well that's an exaggeration, but you know what I mean. It's a pretty tight-knit community, and it really is, the ideal is to be published by someone other than yourself still in many respects. Funders, for instance, don't respect self-publishers even though some of the books that are produced are absolutely breathtaking and really well done.

**The Chair:** — Mr. Elhard.

**Mr. Elhard:** — That is an interesting discussion that you just had because, you know, I could probably identify half a dozen or more self-publishing writers. And it sounds to me like there's a little bit of literary snobbery associated with the fact that they're not well regarded in spite of the fact they produce good work, and I'm a little uncomfortable with that, frankly. But I mean how do publishers and how do writers' organizations separate themselves from those people who are self-publishing, and how is that helpful to the industry?

**Ms. Niskala:** — Actually the Saskatchewan Publishers Group

has taken the position — we were the first in the country really to take the position — that we're one community, and that regardless of whether you're self-published or not, you're still part of the industry and that you deserve the recognition and the support that we can offer.

When I'm talking about the funders that are reluctant to support that, that does not include the Cultural Industries Development Fund which is funded by the Department of Culture, Youth and Recreation, and which is administered by the publishers group, that any publisher can apply for that fund and be juried like any other without regard to whether they're self-published or not. The national funding bodies like the Canada Council and the Department of Canadian Heritage book publishing industry development program, however, do not accept self-publishers as candidates for funding.

**Mr. Elhard:** — You mentioned that there are about 100 books a year published in Saskatchewan. Does that number include the self-published?

**Ms. Niskala:** — Yes.

**Mr. Elhard:** — Okay. In listening to and kind of summarizing, quickly scanning your brief here, one of the primary advantages, as I take it, is that you think collective bargaining would provide for better contractual arrangements between publishers and writers. And I'm wondering whether that isn't achievable outside of collective bargaining. It can be done inside of collective bargaining but it might just as readily be accomplished outside of collective bargaining if you had two really good lawyers working together on behalf of either one of the groups and that the concept of collective bargaining actually gets you into a whole other area of possibilities that you may or may not have intended to broach.

So are you certain, from the perspective of the publishers group, that the collective bargaining model is the primary mechanism by which you want to achieve the better contractual understandings?

**Ms. Niskala:** — I think that the . . . If I understand the model that you're suggesting where you have two lawyers battle it out, that's already what's happened and it's not working. For one thing, it's on a case-by-case basis so it's lots of lawyers. And I think that the feeling of the publishers is stability and predictability and, you know, let's do this once instead of once every time we want to do a book. If you're doing 18 books, you don't want to meet it with 18 different lawyers, right. You want to have this set up once.

And I hope I'm not misunderstanding what you're suggesting, but it seems to me that the predictability and stability of having some rules and regulations that are pretty stable is really what our people are reaching out for in this regard.

Yes, it's possible to have what they call model agreements and that already exists in book publishing. The problem is that they tend to be dictated from an ideal standard and often an unachievable standard and there's no negotiation. When there's negotiation between two parties then, you know, you do come to a point where both parties can live with it and are prepared to live with it and that's not what's happening now. What's

happening now is that writers are perpetually disappointed because publishers are not meeting the standards of the model agreement that their association drafted without consultation from book publishers.

**Mr. Elhard:** — I guess I'm just wondering if the stability and predictability that you're hoping to achieve might not come at the expense of flexibility and uniqueness in any given situation.

**Ms. Niskala:** — Probably the big thing in terms of uniqueness for book publishers has got to do with the ability to pick and choose subsidiary rights. That's one. And the second is to provide an attractive enough agreement to draw people. My understanding of the collective bargaining process is it would set minimum terms and conditions and the whole process of attracting people would be over and above, above scale I guess. And so that part is probably not troubled by a collective bargaining regime.

The ability to pick and choose subsidiary rights is one that writers also value, and more often writers than publishers. Publishers would like to just sort of take care of those writers and handle all those subsidiary rights for them. And writers often say, no, no, no, I've got the connections in Italy; I'm going to make that contract and you can't, you know. Or whatever that particular subsidiary right they're interested in developing by themselves is. And that is often the point where contracts start falling apart the way that they're done now. I don't see why though the negotiation of subsidiary rights couldn't be something that had some flexibility left in it at the end of a collective bargaining negotiation.

**Mr. Elhard:** — So what I would understand this provision to assure is sort of a minimum standard and then publishers and artists, or writers rather, would have the opportunity to negotiate the standards over and above that, the opportunities, the flexibility I talked about earlier. So in essence you're going to end up having the lawyers engaged anyway, are you not, at that juncture? I'm sure these engagements aren't going to be face to face between the publisher and the writer.

**Ms. Niskala:** — Right now what happens is that a publisher pumps out a standard contract, mails it to the writer. The writer gets advice from their friends, signs it or doesn't, and you know, it goes from there. So there's not much face to face happening now. And a lot of misunderstandings happen because of that. I think the other advantage of going through sort of a more negotiated process is that writers and publishers would have a clearer idea of what their rights and obligations are under the agreements. And I think as I mentioned in my brief, publishers spend a lot of time teaching writers, and especially in this province because we tend to be the first stop for new writers — which is very exciting because we get to discover all the good ones — but it also means that we have to teach them.

**Mr. Elhard:** — Thank you.

**Ms. Crofford:** — Yes, I'll squeeze this one in because I think the next group might reflect on it as well. We've had people in the last two days say that this is really about working conditions, benefits, fees, income; that it's not about copyright. Would that be your view?

**Ms. Niskala:** — We have always taken the . . . I know that there are publisher agreements that purport to buy the intellectual property from the writers. But the ideal situation, in the opinion of most publishers, the way that we should continue to work with writers is to license the right so licensed uses enters into rights negotiations.

Books are not something that travel across borders well either because they need to be reissued in the American edition or the British edition, or they need to be translated for the Italian edition. And so we are always talking about rights. And so yes we're talking about copyright. We are talking about the rights in terms of the use that that publisher has.

**Ms. Crofford:** — Yes, and you would consider copyright to be part of the revenue stream of writers?

**Ms. Niskala:** — Yes. The copyright remains in the writers. That's their . . . The licensing of their work though is what we work with.

**Ms. Crofford:** — Okay. With an eye on the clock, I'll stop there.

**The Chair:** — Mr. Iwanchuk's going to finish us off.

**Mr. Iwanchuk:** — Yes, I just . . . Mr. Elhard had a question speaking about one-on-one negotiations. I guess my last question, what I was trying to get to, to talk about sectoral bargaining or sectoring and what that means. Would you say . . . I mean, we had groups in here who say they have national agreements. Are you seeing one-on-one negotiations, or are you seeing some sort of overall agreement or what exactly? Because I wasn't too sure by the time you finished that. It sounded like you were going to have one-on-one negotiations or were you going to have one agreement that would cover everyone? Or how had you thought about that?

**Ms. Niskala:** — No, there wouldn't be one agreement that would cover everyone in book publishing.

**Mr. Iwanchuk:** — Okay.

**Ms. Niskala:** — Scholarly publishers would have possibly different kinds of agreements from trade publishers and literary publishers. Educational publishers, again, have a different set of circumstances, mostly because a lot of educational publishing is done by employees as opposed to independent contractors. So there would need to be different kinds of agreements set up for different types of publishing activity. Is that what you're wondering about?

**Mr. Iwanchuk:** — Yes, I think that's what I was sort of getting to. And thank you because, I mean, we have to have some idea of that and obviously thank you very much. I apologize. We should know more about these specific areas but . . .

**Ms. Niskala:** — I'm just glad to be here to answer questions about them. Someone's interested in book publishing — yahoo!

**Mr. Iwanchuk:** — Yes. No, thank you very much.

**The Chair:** — Thank you very much for your presentation.

**Ms. Niskala:** — Thanks.

**The Chair:** — The next presenter up before the committee is the Professional Photographers of Canada and Saskatchewan branch as well.

These two . . . [inaudible] . . . two documents that you've tabled are . . . all members have them. So if you just want to introduce yourself and then work us through which of these two documents you want to highlight.

**Mr. Kajati:** — My name is Darrel Kajati and the one that says "Photographic Procurement for the Saskatchewan Government" was a brief that was prepared and given to Hon. Mark Wartman about two years back. We tried to get some assistance from him with in terms of dealing with procurement issues and copyright. And what it is is just background information. The other page is what we're working from, the other sheets rather.

**Mr. Raynard:** — My name's Larry Raynard. I'm a member of the Professional Photographers of Canada from Saskatchewan. And the other person that was supposed to be here, Darrol Hofmeister, is actually a member of both of these organizations, and he had a death in the family and couldn't make it today, so I guess I'll be sitting in for him.

I've been a photographer in Regina since 1977. I'm here because I'm concerned about the legacy that we'll be leaving for other photographers. I don't expect to be in the business that much longer, but I've kind of seen a deterioration of where our industry is going with digital photography especially.

There's been huge changes in the whole industry, and people kind of get used to the idea that they can take a picture and just send it to their friends or anyone. And they feel like if we take the picture, we can just ship it to them, and there should be no cost to that. So that's kind of the background of where we're at right now.

Both of our associations have been working together for the last 20 years on national copyright issues, and it's been, you know, a good joining of forces to work on those issues. And about four years ago, I think it was, we started concerning ourselves more with local issues, and this was brought about because the procurement policy for the Government of Saskatchewan changed. It got extended beyond just government and went into ad agencies and that sort of thing. So the whole basis which we were working changed drastically.

I'm thinking that if we don't do something, that there's not going to be anything for the next generation of photographers to look forward to. And on the one hand, we're teaching students right now at SIAST [Saskatchewan Institute of Applied Science and Technology] that they have certain rights under copyright law if they go ahead and act on them. Then when they get out and are in the working field, they don't have those rights especially if they go to work for the government. And I think, Joanne, you know some of the issues that we've raised with the government, and it's just sort of carried on. Nothing has really changed.

When I was sort of faced with this whole situation, I didn't do a lot of work for the government. What I did was what we would

call shake and grin, and I wasn't really worried about copyright on that, but I didn't want to sign the government's procurement policy. So I just decided not to do work for them. In my own personal business I mainly do portrait work. And every one of my clients that comes in signs the rights to me for copyright. And they all do this without any problem, and the system works for me.

Now you know, part of this whole technology change has meant that at one time when a photographer did a photograph, he had a negative and people came to him to get the print. Now because it's digital, somehow they think it's different, and they just want that file. And there's a whole lot of things that we do as professionals to the file after the work is done. So I have never given out those files because I don't know what's going to happen to them after they're done, after I give them to someone else. Whether they're taken to a one-hour lab and they look terrible or whatever, I have no control over that. So that's a big part of my concern about copyright and giving people files whether it's the government or my portrait clients.

Darrel has a different experience. He does a lot more commercial photography. And I think I'm just going to turn it over to him at this point just to talk about more of the commercial end of the photography business.

**Mr. Kajati:** — I guess I'd just sort of like to give you a little history how it's affected me. And in a sense it's putting me out of business with government policy in Regina or in Saskatchewan. I was always aware of it and had chose not to sign it for the same reason Larry had mentioned, and was told that, well when you feel differently, please get back to us.

So about three years back — I think it was in the spring, late spring of '04 — an agency that I worked with quite a bit and also through the government, SaskTel, casino, everybody, was told that I can't work anymore unless I sign this list. And they said you'd better sign it quickly; otherwise you're not, you're not qualified to work for the government anymore. So I explained why I couldn't do that, and they were disappointed of course.

But anyways I've stuck by my guns. It's been three years. A few people were on side, but everybody needs to make a living and eventually caved in, and — which I regret to say — I had to do around Christmastime this year too. I had pretty much gone three years without working and trying to stand on the hill. Finally I had to come down and go to work.

But anyways, what seems so unfair about it is that you end up getting hired for what you charge and not the service that you supply. And the quality — all those sorts of things, integrity — just don't mean anything any more. I've seen jobs go for as little as 50 bucks or lower, different, being awarded because it is the bottom line, what they're looking at.

Now we were told they're trying to watch for taxpayers' dollars, which I can understand, but at the same time, it's ruining an industry. I know photographers who can't afford liability insurance any more. They can't afford to insure their gear. They're barely hanging in there. But it's all they know. And it just seems so unfair. It's really has ruined the industry.

What else can I say about that? A lot of the problems I have with this too, I've seen, is a consistency in the way the procurement policy is applied. Everybody has a different view of it. The agencies take a different view. The photographers are of course trying to protect their interest. And the government basically says anything we use is ours.

Now photographers will shoot what's called stock photography which is personal photography of their own. They might set up a situation, say a boardroom situation, similar to this. Everyone's having a board meeting. Now somebody might come to them and say, do you have an image of people in a boardroom meeting? I say, yes I do. I'll send it off. And I believe the Saskatchewan government looks at the current procurement policy. If you are on the list of signed up, if they use this image and whatever they give you, in their opinion, they own it from then on, for anything. And it can go all through all the different Crowns. It can go anywhere it wants, even though this is the photographer's property and concept — everything.

Now the photographers believe that, well no, that's not right; it's stock photography. It's separate than assignment photography which they fully acknowledge the government owns copyright on because they've signed the list if they go out to do an assignment. So they will charge usage. And I'm not sure this will ever end up because I know it's going on. And maybe nothing will happen. Personally that was the thing that held me back because I didn't feel right about it. I knew that I could never submit stock photography and charge a fee for it because I was told that you don't own it any more once the government has taken and used it.

I've also had problems where, when I wasn't on the list, they said they could go off the list to purchase stock photography. And we came within a hair of signing a contract. And as soon as they saw it, it went to legal. And they came back and said no, we can't buy this. You know, we have to own it. We own it to the point that we can resell it ourselves, which just isn't right without compensation. You know, you don't get financially compensated for that.

What else can I say about it? Oh there's also been many instances too where, you know, they force agencies to use people because it's their turn on the list and that they have to work with people they know aren't competent in a certain field . . . [inaudible] . . . agencies usually like to work with photographers that have special areas. Like say someone might work with children. Somebody might work with, well, work shooting executives and those sorts of areas. And I know for a fact that it has happened where jobs have had to be redone because somebody went out and didn't come back with the product they were supposed to.

So I guess what I'm saying is it would be nice to be able to negotiate and work with contracts and just being a more professional approach, I guess is what I'm saying.

**Mr. Raynard:** — Basically the way we work with all our other commercial clients is that you negotiate each job as it comes up. The way it's set up in the procurement policy right now, you sign away all the copyright before you're considered for a job.

The way we're used to working with different commercial clients, they'll specify whether they want all the rights or just a specific right and then you can base your quote on that because you know it's only limited usage or something along that line. But when you have to give it all up before you're even considered, you don't know what the job is, it's kind of like you just take all your rights away before you can even work for the government.

And you know, to me it's just different areas that are not working with each other. If I can go back to the SIAST example, I've been on the advisory board. I've been the Chair of the photography program at SIAST for over 10 years and I was just going . . . one of the teaching modules learning guide 219 last night and in the copyright issues, it says:

The licensee acknowledges that the photographer . . . is the first and sole owner of all copyright of the work(s) covered in this agreement and that the photographer . . . shall remain the sole owner of any and all photographs, or any materials used to produce and . . . reproduce the photographs . . . as well as all copyright. All rights not expressly granted under this agreement remain the exclusive property of the photographer . . .

Now you know, this is just one area that we're teaching them. We're also telling them that in certain situations, you're going to sign certain rights, but you can expect a different amount of recompensation for different types of jobs. Now you know, we're teaching them that, but then they get out in the real world and come up against the procurement policy which is just like a smack across the head . . . Like, this is not what we're teaching them. It's totally different.

And I'm thinking, you know, we're spending millions of dollars now trying to bring people back to Saskatchewan to keep them here but these kind of things are driving them away. And I know of a couple of our past presidents of our Saskatchewan association that are now in points west because the climate here wasn't right for them. So I think if we want to, you know, keep people around . . . We're turning out about 10 to 15 graduates in photography a year, and I know it's part of the thing when you're young to head west or wherever, but hopefully people will come back.

I think that's the biggest part of what we had to present. Our Saskatchewan division of PPOC [Professional Photographers of Canada Inc.] are also members of Saskatchewan Arts Alliance, and we basically agree with the presentation that they've made on the different points. But our biggest thing has always been the procurement policy of the government itself.

We deal everyday with different situations with our private clients and commercial clients, and we have found a way to deal with that. And with some of them I choose not to work for them. But it's just sort of like this blanket thing of giving away a copyright before you can even be considered for a job in government, that kind of really make us check this out again.

**The Chair:** — Questions? Mr. Elhard.

**Mr. Elhard:** — Gentlemen thank you for your personal stories today. I have to say that I am very familiar with the

circumstances that you've described because my own son is a professional photographer, and he's complained to me on many occasions on how new technology has made photography sort of the purview of anybody and everybody. And they feel they have the right to use it under any circumstances that they wish whether there's copyright application or not. So I know how difficult that's become for the professional photographer to survive in that environment.

But I guess the story that you've also told us now in terms of your relationship with the provincial government strikes me as bizarre, frankly. I'd heard rumours of this arrangement previously. And I guess, you know, unless I misunderstand what's going here in this committee and this legislation, if this legislation moves forward and achieves what its purpose and intent is, this procurement policy by the provincial government will be in violation of this legislation in spirit, if not in law.

**Mr. Raynard:** — Well I think even before the amendments it was in violation of it in spirit, and that's kind of what we were trying to draw to their attention. And we've had a number of meetings with Executive Council, and you know basically they're telling us, well all of these photographers signed this. Well the people that signed it were . . . kind of had the gun to their head and they're not going to complain to the powers that be or they'll not get jobs.

So you know when we meet with Executive Council and they tell us these things, well they're saying our people are not interested in changing this. Well of course they're not. You know they've got a good thing going here even if it collides head-on with The Status of The Artist Act, whether or not it has these amendments. We still saw this kind of as an incongruity before these amendments came about. So I'm just hoping that this will just make it a little bit stronger and we can come back again. We're not going away. Photographers are going to be here. And yes, some people will always sign that because they have to put meat on the table and feed the kids and go on with life. But it doesn't mean that they like it.

**Mr. Elhard:** — You have an association of professional photographers existent in the province now.

**Mr. Raynard:** — Right.

**Mr. Elhard:** — And have you . . . You said you met with Executive Council and you raised this issue, but has there been any attempt to withdraw services completely?

**Mr. Raynard:** — No, there hasn't but I mean each . . . Twice in our annual meetings we've had unanimous support for pursuing, you know, a change in this procurement policy. So I mean to withdraw support that means that specific photographers that are doing work for the government are going to lose, you know, their living. So we weren't going to try and force some individual members to stop working because not everybody believed in the way this policy was set up. So that didn't come about.

**Mr. Elhard:** — But that is the price I suppose that you may have to pay in order to get the change made, as an association, as members of the association. I mean I think it's unfortunate that it would come to that. I'm frankly surprised that you're in

this position, but you may have to draw attention to this in a more specific and direct public way in order to get the policy changed.

**Mr. Raynard:** — I feel like if there were some people that were making the majority of their income through government work and we asked them to quit with the rest of us, they would quit our association before they would quit doing the work because, you know, that's their income. They might not agree with it, but life goes on.

**Mr. Elhard:** — So they sold their rights in order . . . They sold their rights to their work basically.

**Mr. Raynard:** — Well you know, and this thing isn't just entirely about selling their rights. I mean we sell the rights all the time. But this procurement policy, you have to give up the rights before you even know what the job is, so you're kind of caught there.

I mean for the types of jobs that I was doing before, I refused to sign this. It wouldn't really matter. It was, you know, what we call shake and grin. You know, somebody's getting an award; a minister is shaking their hand. I don't really care after that goes out what use gets made of it. But there's a lot of other things that are going through agencies, and that's really where, you know, it came to a point . . . is when the agencies were also extended this procurement policy practice. It was going on, you know, not too bad for them when it was just government things, but then it got extended to the agencies and the Crowns which took in a whole lot more work than just government.

**Mr. Elhard:** — How long has this policy been in effect as far as you know? And when was the expansion to the Crowns?

**Mr. Kajati:** — I think we were told that it has always been in effect. But as far as I knew, the ad agencies were just notified, I think, in the spring of '04 that they had to follow. So when they brought this up . . . Did this come just out of nowhere? They said, no this is always been the way it is.

**Mr. Elhard:** — Well I guess, there's lots of things that have always existed previously, and there comes a time when change has to be implemented. And you know, it's hard for us as a committee to deal with the concept of intellectual property and the protection of those rights on behalf of artists generally if we as legislators aren't prepared to take a stand in opposition to the kind of practice that's happening now.

**Mr. Kajati:** — Right.

**Mr. Elhard:** — And I'm not making that as a political statement; that's not a partisan statement. I mean, I think that that's true for politicians generally. If we're expecting a higher standard of people, then we need to live up to that standard as well. And I just want to make that point. Thank you.

**Mr. Raynard:** — We have had lots of support from the political sector, but it's sort of like then we go to Executive Council and it's a totally different beast — just night and day, you know. We get lots of support from politicals.

**The Chair:** — Ms. Crofford.

**Ms. Crofford:** — Well I would say, isn't it a good thing we're here today discussing an Act that might have an impact on this because as we know in governments, as in any group of people, there's always some people who think one thing is right and other people who don't. And I think we do have an ability to be thoughtful, and I'm glad to hear that you support moving ahead with something that provides some protections to people without it being at the individual whim of any particular government or individual who may be in a position to influence policy.

So that's my little speech for today, but it's not political. It's really just looking at the fact that this does seem to be an unfair practice that hopefully this legislation would deal with or not. I guess we'd need an opinion about whether what's contained in the proposal would adequately direct that practice ending.

**Mr. Raynard:** — Otherwise we're just wasting time here.

**Ms. Crofford:** — So it'd be your view that this would have to adequately address ending that practice.

**Mr. Raynard:** — Yes. I was at an art auction about three weeks ago. I had a couple of pieces in it. And in the program it specifically stated, if you buy this artwork that does not give you the right to copy it. You can have my artwork on your wall, but you can't go around, make cards or anything else with it. So that's kind of a little more enlightened attitude I think than what we get from the procurement policy.

**Ms. Crofford:** — The second question is, you do have a national body, but has it ever engaged in bargaining with anybody? I mean does it have agreements on standards and scale or anything like that, with any engagers at the federal level or in Quebec or anywhere?

**Mr. Raynard:** — CAPPAC [Commercial and Press Photographers Association of Canada] has more standards, but they don't have agreements.

**Ms. Crofford:** — Okay.

**Mr. Raynard:** — And it's been a long time since Professional Photographers of Canada have had any kind of rate scale set up. It seemed to take forever to get it set up.

**Ms. Crofford:** — So they haven't particularly engaged with any of their major employer sectors or anything to negotiate the stuff?

**Mr. Raynard:** — No. The biggest thing that we worked on, and CAPPAC and PPOC have worked together on copyright issues with the federal government. But that's not any rates or anything like that.

**Ms. Crofford:** — And I guess the last question that we've been asking a lot of people is, would you be comfortable with this being adjudicated or have dispute resolution handled by the Saskatchewan Labour Relations Board?

**Mr. Raynard:** — I think we would, yes.

**Ms. Crofford:** — That's it for my questions.

**The Chair:** — Ms. Morin.

**Ms. Morin:** — Thank you for your presentation. I just quickly read through your briefs and again see that you're firmly behind this legislation. I was just wondering — and you probably did elaborate on this and I must have missed it — but how many members do you have in your association?

**Mr. Raynard:** — Nationally we have about 1,000 . . .

**Ms. Morin:** — I mean provincially though.

**Mr. Raynard:** — Provincially about 120.

**Ms. Morin:** — Okay. And have you received any feedback from them specifically with respect to this legislation? Do they see that there's going to be some economic benefits in it? Where are the benefits that they see coming out of this legislation for them?

**Mr. Raynard:** — We haven't had a provincial meeting since this legislation came forward. But you know, on two occasions we've had unanimous approval of what we were proposing on a procurement policy, so I'm sure we would get the same response because that was something more specific than The Status of the Artist Act.

**Ms. Morin:** — So they are aware of the status of the artist and would be . . . I mean this is a proposal on behalf of your members then, right?

**Mr. Raynard:** — Right.

**Ms. Morin:** — With respect to the support for the legislation.

**Mr. Raynard:** — Yes.

**Ms. Morin:** — Okay, great. Thank you.

**The Chair:** — Seeing no further questions then, thank you very much for your presentation. Our last presenter has met with an unfortunate accident and will not be able to attend, so the committee will be adjourned then until tomorrow at 9:00 in camera in this room.

[The committee adjourned at 16:31.]