



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 32

(2009, chapter 32)

**An Act to amend the Act respecting
the professional status and conditions
of engagement of performing, recording
and film artists and other legislative
provisions**

Introduced 1 April 2009

Passed in principle 10 June 2009

Passed 18 June 2009

Assented to 19 June 2009

EXPLANATORY NOTES

This Act broadens the scope of the Act respecting the professional status and conditions of engagement of performing, recording and film artists by providing that the artists to which the Act applies will, in the audiovisual production industry, also include other persons who contribute directly to the creation of the artistic work. This Act introduces new negotiating sectors in that industry, and sets out measures aimed at maintaining and adapting recognition previously granted to the artists' associations working in those sectors.

This Act abolishes the Commission de reconnaissance des associations d'artistes et des associations de producteurs and transfers its functions to the Commission des relations du travail.

Lastly, it contains related, transitional and consequential amendments.

LEGISLATION AMENDED BY THIS ACT:

- Financial Administration Act (R.S.Q., chapter A-6.001);
- Labour Code (R.S.Q., chapter C-27);
- Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);
- Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1);
- Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (R.S.Q., chapter S-32.01);
- Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., chapter S-32.1).

Bill 32

AN ACT TO AMEND THE ACT RESPECTING THE PROFESSIONAL STATUS AND CONDITIONS OF ENGAGEMENT OF PERFORMING, RECORDING AND FILM ARTISTS AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., chapter S-32.1) is amended by inserting the following sections after section 1:

“1.1. For the purposes of this Act, an artist is a natural person who practises an art on his own account and offers his services, for remuneration, as a creator or performer in a field of artistic endeavour referred to in section 1.

“1.2. In the context of an audiovisual production mentioned in Schedule I, a natural person who, whether covered by section 1.1 or not, exercises on his own account one of the following occupations, or an occupation judged analogous by the Commission, and offers his services for remuneration is considered to be an artist:

(1) an occupation relating to the design, planning, setting up, making or applying of costumes, hairstyles, prostheses, make-up, puppets, scenery, sets, lighting, images, sound, photography, visual or sound effects, special effects, or any occupation relating to recording;

(2) an occupation relating to sound or picture editing and continuity;

(3) the occupations of script supervisor or location scout manager, and occupations relating to the management or logistics of an efficient and safe shoot, whether indoors or outdoors, including the transport and handling of equipment and accessories;

(4) the occupations of trainee, team leader and assistant in relation to persons exercising occupations referred to in this section or section 1.1.

The following are not covered by this section: accounting, auditing, management and representation, legal and advertising services, or similar administrative services that have only a peripheral contributing value or interest in the creation of a work.”

2. Section 2 of the Act is amended

(1) by striking out the definition of “artist”;

(2) by inserting the following before the definition of “film”:

“**“Commission”** means the Commission des relations du travail established by section 112 of the Labour Code (chapter C-27);”.

3. Section 6 of the Act is amended by inserting “or exercise an occupation referred to in section 1.2” after “practise an art”.

4. Section 9 of the Act is amended by replacing “Commission de reconnaissance des associations d’artistes et des associations de producteurs established by section 43” in paragraph 2 by “Commission des relations du travail”.

5. Section 18.1 of the Act is replaced by the following section:

“18.1. If an application for recognition for a sector has been filed with the Commission and another association files an application for that sector or part of that sector, the parties may jointly request that the Commission designate a person to facilitate an agreement between them.

Sections 68.3 and 68.4 apply with the necessary modifications.”

6. Section 19 of the Act is replaced by the following section:

“19. Recognition granted to an association takes effect on the date of the Commission’s decision.”

7. Section 23 of the Act is replaced by the following section:

“23. A withdrawal of recognition takes effect on the date of the Commission’s decision.”

8. Sections 26.1, 29, 31 to 33, 34 and 35.2 of the Act are amended by replacing “Commission” wherever it occurs by “Minister”, with the necessary grammatical modifications.

9. Section 35 of the Act is amended by replacing “with the Commission” in the first paragraph by “with the Minister of Labour”.

10. Section 35.1 of the Act is amended by inserting the following paragraph after the first paragraph:

“Section 101 of the Labour Code, including section 129 to which it refers, applies, with the necessary modifications, to arbitration awards made as part of the grievance arbitration procedure.”

11. The heading of Chapter IV of the Act is replaced by the following heading:

“FUNCTIONS AND POWERS OF COMMISSION DES RELATIONS DU TRAVAIL”.

12. Division I of Chapter IV of the Act, comprising sections 43 to 55 and including its heading, is repealed.

13. The heading of Division II of Chapter IV of the Act is struck out.

14. Section 56 of the Act is replaced by the following section:

“**56.** For the purposes of this Act, the Commission’s functions are

(1) to decide any application for recognition submitted by an artists’ association or an association of producers; and

(2) to decide whether the membership requirements provided for by the by-laws of recognized associations comply with this Act and whether those requirements are enforced.”

15. Section 58 of the Act is amended by adding “, including the status of artist or producer within the meaning of this Act” at the end.

16. The Act is amended by inserting the following section after section 59:

“**59.1.** The Commission may resolve any difficulty arising from the application of the provisions of this Act and those of the Labour Code. To that end the Commission may, among other things, specify the respective scope of a certification and a recognition granted under those provisions, refuse to issue a certification or recognition or, within the scope of its power under paragraph 1 of section 118 of the Code, summarily reject any application made for the principal purpose of circumventing this Act or obtaining another certification or recognition in addition to a previously granted certification or recognition.”

17. Section 61 of the Act is repealed.

18. Section 62 of the Act is amended by striking out the second sentence of the first paragraph.

19. Section 63 of the Act is amended by striking out the last paragraph.

20. Section 63.1 of the Act is repealed.

21. Sections 64 to 68 of the Act are replaced by the following sections:

“64. The provisions of the Labour Code respecting the Commission des relations du travail, its commissioners and its labour relations officers apply, with the necessary modifications, to any application that lies within the Commission’s purview under this Act. Likewise, the provisions of the Code and the regulations that set out rules of procedure, evidence or practice apply to any application the Commission may receive.

“65. A copy of every decision made by the Commission under this Act must be sent to the Minister.”

22. The Act is amended by inserting the following after section 68:

“CHAPTER IV.1

“INQUIRY AND OTHER ADMINISTRATIVE MEASURES

“68.1. The Minister may designate any person to inquire into any matter relating to the carrying out of this Act.

Such a person has, for the purposes of the inquiry, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to impose imprisonment.

“68.2. The Minister shall draw up, annually, a list of mediators and arbitrators for the purposes of this Act, after consultation with recognized artists’ associations and associations of producers.

With the consent of the parties concerned, the Minister may also designate as mediator a conciliation officer or mediator from the Ministère du Travail identified by the Minister of Labour.

“68.3. Except with the consent of the parties, nothing that is said or written in the course of a mediation session may be admitted as evidence before a court of justice or before a person or administrative body exercising adjudicative functions.

“68.4. Mediators cannot be compelled to divulge, before a court of justice or before a person or administrative body exercising adjudicative functions, information revealed to them or brought to their knowledge in the course of their mediation functions, or to produce documents made or obtained in the course of their mediation functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to the documents of a mediation file.”

23. The Act is amended by adding the following schedule at the end:

“SCHEDULE I
(*section 1.2*)

“Audiovisual productions in the fields of film and recording of commercial advertisements

“*film and television productions*” means film and television productions, including pilots, that are to be first marketed for distribution to the public via movie theatres, television, home viewing, Internet viewing or some other means. A film or television production includes an audiovisual production that qualifies as a film within the meaning of this Act and is not an “advertising film” or a “video-clip”;

“*advertising film*” means audiovisual commercial advertisements, whatever the medium, that are to be first marketed via television or movie theatres;

“*video-clip*” means

(1) any video-clip, whatever the medium and regardless of how it is to be marketed to the public; and

(2) any total or partial recording of a musical, comedy or variety show, whatever the medium, except a recording that is to be first marketed via movie theatres or television.”

AMENDING PROVISIONS

FINANCIAL ADMINISTRATION ACT

24. Schedule 2 to the Financial Administration Act (R.S.Q., chapter A-6.001) is amended by striking out “Commission de reconnaissance des associations d’artistes et des associations de producteurs”.

LABOUR CODE

25. The Labour Code (R.S.Q., chapter C-27) is amended by inserting the following after section 152:

“CHAPTER X.1

“RESPONSIBILITY

“**152.1.** The Minister of Labour is responsible for the administration of this Code. The Minister’s responsibility with regard to the Commission des relations du travail extends to the exercise of the Commission’s functions under this Code and under any other Act.”

26. Schedule I to the Code is amended by inserting the following paragraphs after paragraph 18:

“(18.1) sections 15, 21 and 23 of the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (chapter S-32.01);

“(18.2) sections 12, 20, 22, 42.5, 56, 57, 58 and 59.1 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (chapter S-32.1);”.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

27. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10) is amended by striking out “the Commission de reconnaissance des associations d’artistes et des associations de producteurs”.

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

28. Schedule II to the Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1) is amended by striking out “the Commission de reconnaissance des associations d’artistes et des associations de producteurs”.

ACT RESPECTING THE PROFESSIONAL STATUS OF ARTISTS IN THE VISUAL ARTS, ARTS AND CRAFTS AND LITERATURE, AND THEIR CONTRACTS WITH PROMOTERS

29. Section 3 of the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (R.S.Q., chapter S-32.01) is amended by inserting the following definition after the definition of “association”:

““Commission” means the Commission des relations du travail established by section 112 of the Labour Code (chapter C-27);”.

30. Section 10 of the Act is amended by replacing “Commission de reconnaissance des associations d’artistes et des associations de producteurs, established by section 43 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (chapter S-32.1)” by “Commission”.

31. Section 20 of the Act is replaced by the following section:

“**20.** Recognition granted to an association takes effect on the date of the Commission’s decision.”

32. Section 24 of the Act is replaced by the following section:

“**24.** A withdrawal of recognition takes effect on the date of the Commission’s decision.”

33. Section 48 of the Act is amended by replacing “Commission de reconnaissance des associations d’artistes et des association de producteurs” by “Commission”.

TRANSITIONAL AND FINAL PROVISIONS

34. For the purposes of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., chapter S-32.1), and despite any previous decision, in the context of audiovisual productions mentioned in Schedule I to that Act, the appropriate negotiating sectors and the recognized artists’ associations are determined, with regard to the occupations referred to in section 1.2 of that Act, by sections 35 and 36, subject to the measures set out in sections 39 to 44.

For the purposes of those provisions,

“AQTIS” means the Alliance québécoise des techniciens de l’image et du son;

“ARRQ” means the Association des réalisateurs et réalisatrices du Québec;

“IATSE” means the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada. A reference to IATSE is a reference to local 514 or 667 of the Alliance, in accordance with the respective fields represented by each.

“QDCDGC” means the Québec District Council of the Directors Guild of Canada; and

“sector 1”, “sector 2”, “sector 3” and “sector 4” are the sectors provided for in the 24 September 2008 agreement between AQTIS and IATSE. The description of sectors 3 and 4 must be read in conjunction with the production budget parameters specified in the 17 September 2008 letters sent to those associations by the Deputy Minister of Culture, Communications and the Status of Women. Excluded from these sectors are audiovisual productions that are “advertising films” and “video-clips” described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists. The definitions and other provisions of that agreement that contribute to clarifying the scope of these sectors and facilitating the identification of their respective spheres of application may not be invoked or used except to those ends.

The agreement and letters were tabled as Sessional Documents Nos. 137-20090401, 138-20090401 and 139-20090401. The Minister of Culture, Communications and the Status of Women may also take the necessary steps to make these documents available to the persons concerned.

35. In the case of audiovisual productions that are film and television productions described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists, the eight negotiating sectors and the recognized artists' associations are as follows:

(1) Negotiating sectors and recognized associations:

(a) Sectors 1: Sector 1 — Video (video and other media) and Sector 1— Film:

— ARRQ: director (non-English-language production);

— QDCDGC: director (English-language production), production designer and art director;

— AQTIS:

— the occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except drafts person and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector;

(b) Sectors 2: Sector 2 — Video (video and other media) and Sector 2 — Film:

— QDCDGC: director (English-language production), 1st assistant director, 2nd assistant director, 3rd assistant director, production designer, art director, assistant art director, art department coordinator, assistant art department coordinator;

— AQTIS: location manager, assistant location manager, location scout manager;

— IATSE:

— the other occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except drafts person and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector;

(c) Sectors 3: Sector 3 — Video (video and other media) and Sector 3 — Film:

— QDCDGC: director (English-language production), 1st assistant director, 2nd assistant director, 3rd assistant director, production designer, art director, assistant art director;

— AQTIS:

— the other occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except draftsman and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector;

(d) Sectors 4: Sector 4 — Video (video and other media) and Sector 4 — Film:

— QDCDGC: director (English-language production), 1st assistant director, 2nd assistant director, 3rd assistant director, production designer, art director, assistant art director, art department coordinator, assistant art department coordinator;

— AQTIS: location manager, assistant location manager, location scout manager;

— IATSE:

— the other occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except draftsman and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector.

For the purposes of this section, the “Video (video and other media)” and “Film” subdivisions must be understood as consisting of the sectors recognized by the Commission de reconnaissance des associations d’artistes et des associations de producteurs.

(2) Occupations deemed to be covered:

The occupations of set designer and draftsman, and the occupations that are the subject of the group agreements of 15 October 2001, 1 July 2005 and

17 June 2007, tabled as Sessional Document No. 140-20090401 and to which the Association des producteurs de films et de télévision du Québec is party, are deemed to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists. The Minister of Culture, Communications and the Status of Women may take the necessary steps to make these documents available.

The tasks and responsibilities entailed by these occupations may continue to vary according to the characteristics of the productions concerned, the nature of the medium or the means of distribution. Since the occupations related to audiovisual productions also vary according to context, the group agreements concerning the various types of audiovisual production may continue to differ in scope without the imposition, under the first paragraph of paragraph 2, of any standard of uniformity or comprehensiveness regarding the occupations concerned.

36. Audiovisual productions that are “advertising films” or “video-clips” as described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists constitute distinct negotiating sectors for the purposes of that Act.

With regard to the occupations covered by section 1.2 of that Act, the following artistic associations are recognized for those sectors:

- ARRQ: director (non-English-language production);
- QDCDGC: director (English-language production), production designer and art director;
- AQTIS: the other occupations covered by section 1.2 of that Act.

Despite the descriptions of occupations in subparagraphs 1 to 4 of the first paragraph of section 1.2 of that Act, the first list of occupations applicable in terms of AQTIS recognition with regard to each type of audiovisual production must be established on the basis of the following lists of occupations, adjusting or removing if necessary those occupations considered unsuitable for such productions:

(1) in the case of “advertising films”, the occupations covered by the group agreement of 17 June 2007, which is part of Sessional Document No. 140-20090401; and

(2) in the case of “videoclips”, the occupations covered by the agreements of 15 October 2001 and 1 July 2005, which are part of Sessional Document No. 140-20090401.

The second paragraph of paragraph 2 of section 35 applies, with the necessary modifications, to occupations that may be specified by the Commission.

No application may be made to the Commission before 1 July 2010 with a view to further specifying, for the purposes of AQTIS recognition, the other occupations to which the second paragraph refers. At the request of an interested association, the Minister may extend this period, which may not however, by the extensions granted, run beyond 1 January 2011. The Minister advises the associations concerned in writing of the extension granted.

37. At the request of AQTIS or any interested association of producers, the Minister may, so far as an application has not been filed with the Commission, designate a mediator to help the associations concerned clarify the list of occupations applicable for each type of production referred to in section 36. The Minister assumes the expenses of and remunerates such a mediator.

38. A notice of negotiation may be given under section 28 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists without waiting for the expiry of the period provided for in section 36 of this Act, unless the parties are bound by an agreement.

An application for arbitration under section 33 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists can only be filed after the expiry of the period provided for in section 36 of this Act.

For the purposes of section 34 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, the date of receipt of any notice of negotiation sent during that period is deemed to be the day following the expiry of the period.

39. The recognitions of AQTIS, ARRQ and QDCDGC provided for in this Act must be interpreted so as not to restrict the recognitions respectively held by those associations on 1 July 2009.

Moreover, in accordance with the succession rules set out in section 37 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, recognitions under this Act do not affect the continued application of any group agreement, or any arbitration award made in lieu of a group agreement, that is binding on one of those associations, nor permit the renegotiation of such an agreement.

40. The recognitions provided for in sections 35 and 36 must be interpreted so as not to impinge on the recognition held by the Association des professionnels des arts de la scène du Québec (APASQ) or any other artists' association recognized under the Act respecting the professional status and conditions of engagement of performing, recording and film artists.

41. No later than 31 July 2009, IATSE must file a certified copy of its by-laws with the Commission des relations du travail.

42. The recognition of a representative artists' association for the occupations of draftsman and set designer in the context of audiovisual productions described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists is determined in accordance with the provisions of that Act.

43. The sectors of negotiation provided for in sections 35 and 36 apply until the Commission des relations du travail modifies or replaces them; however, those sectors of negotiation may not be modified or replaced before 1 July 2014.

The time period provided for in the first paragraph does not prevent an application being presented to the Commission des relations du travail to review the subdivision of the sectors of negotiation provided for in section 35 in relation to the audiovisual production media, on condition that the application is made jointly by the artists' association recognized for the sector and a concerned association of producers. These parties may, among other things, request that the Commission ratify any agreement made in relation to the subdivision of the sector.

On request or on the Minister's own initiative, the Minister may designate a mediator to facilitate a rapid resolution of a difficulty in interpreting or applying the sectors of negotiation provided for in section 35 with regard to a production. The Minister assumes the expenses of and remunerates such a mediator. The parties are required to attend any meeting to which the mediator convenes them.

44. The recognitions of artists' associations provided for in sections 35 and 36 take effect on 1 July 2009, in particular for the purposes of paragraph 2 of section 14 and the first paragraph of section 37 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists.

Except with regard to negotiations involving the ARRQ, the first negotiations in the negotiation sectors provided for in sections 35 and 36 after the taking effect of a recognition determined by those sections constitute negotiations for a first group agreement within the meaning of the Act respecting the professional status and conditions of engagement of performing, recording and film artists.

45. The vice-president of the Commission de reconnaissance des associations d'artistes et des associations de producteurs becomes, for the unexpired portion of her term, a commissioner of the Commission des relations du travail assigned to the labour relations division. She must, before 30 August 2009, take the oath provided for in section 137.32 of the Labour Code (R.S.Q., chapter C-27).

The new commissioner's term may be renewed in accordance with the procedure provided for in sections 137.19 and 137.20 of the Code.

Section 137.12 of the Code does not apply to the new commissioner, even on subsequent renewal, for as long as she is a commissioner.

The Regulation respecting the remuneration and other conditions of employment of commissioners of the Commission des relations du travail, made by Order in Council 1193-2002 (2002, G.O. 2, 5466), applies to the new commissioner.

46. The term of the part-time member and those of the additional temporary members of the Commission de reconnaissance des associations d'artistes et des associations de producteurs end on 1 July 2009.

A member may, however, under the same conditions, with the authorization of and for the time determined by the president of the Commission des relations du travail, continue in office to conclude cases the member has begun to hear but has not yet decided.

47. The persons who are members of the personnel of the Commission de reconnaissance des associations d'artistes et des associations de producteurs on 30 June 2009 are deemed to have been appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

The Conseil du trésor determines their assignment, remuneration and classification and any other conditions of employment applicable to them. This cannot result in a regular salary below that which they received as members of the personnel of the Commission.

48. Matters pending before the Commission de reconnaissance des associations d'artistes et des associations de producteurs on 30 June 2009 are continued before the Commission des relations du travail.

Unless the president of the Commission des relations du travail decides otherwise, such cases are continued by one of the persons who sat on the panel of the Commission de reconnaissance des associations d'artistes et des associations de producteurs that heard the parties.

However, Case No. R-124-08 between the Union des artistes, the Festival international de jazz de Montréal and other parties, pending before the Commission de reconnaissance des associations d'artistes et des associations de producteurs, is to be continued by the panel that began to hear the parties.

With regard to matters the hearing of which began prior to 1 July 2009, and continued before a person other than those who heard the parties, the Commission may, with the parties' consent, rely, as regards oral evidence, on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing, if any, subject to a witness being recalled or other

evidence being required if the Commission finds the notes or the recording insufficient. The same applies to matters the hearing of which ended before that date, but for which a decision had not yet been rendered.

49. The Minister of Culture, Communications and the Status of Women is substituted for the Commission de reconnaissance des associations d'artistes et des associations de producteurs, except with regard to the handling of matters pending before the Commission, and acquires its rights and obligations.

50. The records, documents and archives of the Commission de reconnaissance des associations d'artistes et des associations de producteurs become records, documents and archives of the Commission des relations du travail or the Minister of Culture, Communications and the Status of Women, according to the functions conferred on each by this Act.

However, the Minister of Labour becomes the depositary of group agreements and arbitration decisions in lieu of agreements filed with the Commission de reconnaissance des associations d'artistes et des associations de producteurs before 1 July 2009.

51. This Act comes into force on 1 July 2009.