

Letters of Intent, Verbal Agreements...and Contracts

Well, my lord, when there's a question of a contract, I always say, show it to me on paper. If it's to be talk, let it be talk; but if it's to be a contract, down with it in black and white; and then we shall know what we're about.
G.B. Shaw, *Getting Married*

Stay in this business long enough, and someone is bound to offer you a job by way of Letter of Intent, Verbal Agreement, or some other not-quite-a-contract method. Equity has always advised members to be leery of accepting non-contractual representations of this type, and we still do. At our February 2009 National AGM, we asked Equity's legal counsel Harold Caley (of CaleyWray) to explain to us the problems that can arise when you don't have a properly executed contract. The following is based on his presentation to the members.

Contracts 101

There are many kinds of contracts in the world, executed for all kinds of reasons, but for the purpose of this discussion, let's stick to the type with which we are most familiar: a contract for services. In Equity parlance - an engagement contract.

In order for an engagement contract to be valid, it must include certain key elements:

- clear enunciation of all significant terms and conditions, including services to be provided and fees to be paid;
- correct identification of all parties to the contract;
- the beginning and end dates for which the contract is to be valid;
- articulation of the manner in which the contract can be terminated; and
- a clear indication by both parties that they have had a "meeting of minds" on the matter – that they understand the terms of the contract and are knowingly entering into a binding agreement based on those terms.

In the case of an Equity engagement contract, there are two other important inclusions:

- incorporation of all terms of the applicable scale agreement or policy; and
- identification of the mechanism by which contractual disputes will be resolved.

If you pull out one of your old contracts and take a look at it, you'll find all of these items and more. It's not for nothin' that the typical engagement contract fills both sides of a legal-size sheet of paper.

Letters of Agreement, and the like

At right is a copy of a letter of agreement that came into the office a while ago. Although it is more comprehensive than many, the deficiencies are still easy to spot:

- the actual engager is not clearly identified (who is responsible for the fulfilment of this agreement: the Producer, or the un-named company?);
- there is no start or end date for this agreement, or the subsequent workshop and production contracts (how long is the artist expected to keep himself or herself on hold, and how much work will there be?);
- the key determinant of "successful completion" of the workshop is not defined (does this mean the Producer likes the resulting script, or likes your acting?);

ACTOR AGREEMENT	
This AGREEMENT made this _____, 200____, between:	
_____ – in trust for company to be named ("the Producer")	
-and-	
_____ ("the Actor")	
1. The Producer agrees to sign the Actor to the Canadian Actors' Equity Association (CAEA) Independent Theatre Agreement, on or before _____ and to pay the following fees subject to any and all deductions by CAEA: Weekly Workshop Fee _____	
2. Upon successful completion of the workshop, the Producer agrees to sign the Actor to the Canadian Actors' Equity Association (CAEA) Independent Theatre Agreement, on or before _____ and to pay the following fees subject to any and all deductions by CAEA: Weekly Fee: \$ _____ Weekly Bonus: \$ _____	
3. At minimum the Actor will receive first credit and billing on all print material, including all advertising, posters, and handbills.	
4. The Actor will receive two (2) complimentary tickets to Opening Night, as well as two (2) tickets for his or her agent. Complimentary tickets will be provided during the run of the show for any persons in the theatre industry who can further the Actor's career, provided that the theatre is less than 80% sold and written notice is provided at least 24 hours ahead of time.	
I, _____, have read and understand the terms of this agreement. (Actor)	
_____ (Authorized signature for the Producer)	_____ (the Actor)
Date:	Date:
Print Name:	Print Name:
Phone:	Phone:

- there is no statement of how either party may terminate this obligation (what if a rather more concrete or lucrative offer came your way?); and
- there is no identification of a dispute resolution mechanism.

What does all this mean?

The fewer hallmarks of a “contract” there are, the more leaky and unenforceable the agreement is. Beyond that, when an agreement is written *pending an actual contract*, it is generally accepted in the legal world that no contract is in place, or a future contract would not be necessary. In this instance, the Producer could simply announce that the unnamed company has decided not to go ahead with the project at this time, and that’s the end of it. There really is no remedy for the Artist.

The next obvious question is: can’t Equity help you? In most cases like this, no. This agreement is not an Equity contract, and it was executed outside any framework under which Equity might have sway. Second obvious question: what about pursuing the engager through the courts? Well, you are probably out of luck there, too. Not only is it likely a court would accept the view that a pending contract means no contract, but most will not get involved in a dispute where a professional association is the named representative in matters of contract negotiation. You will be expected to resolve the matter through Equity, which we have already told you we can’t do. In limited cases, there may be some moral suasion we can bring to the matter, but results are entirely dependent on the goodwill of the engager.

We sometimes gets asked if we can’t produce an official Equity letter of agreement, and we have consistently declined to do so. It would mean creating a document that we ultimately couldn’t enforce. What would be the point? If we created one that had the strength of an actual contract, well, we already have those; the usual reason for resorting to a letter of agreement is that the engager is not prepared to sign a contract in the first place.

Before we move on, we should point out that many letters of agreement and letters of intent actually contain much less information than the example above. ‘Nuff said on that.

Verbal Agreements

After the preceding section, it feels kind of gratuitous to even write this part, but there is a point worth making on the matter. Two very, very important aspects of any enforceable contract are clear enumeration of terms, and a clear statement that both parties agree on the terms and acknowledge their intent to enter into a binding agreement.

It goes with out saying that this is much easier to accomplish in writing than it is verbally. That’s why contracts are habitually committed to paper – not because paper has magical legal properties, but because if everything is written down and signed, there is no question as to the terms, and no question that both parties agreed to those terms. Most disagreements can be solved simply by reading the contract.

Verbal agreements are wholly insufficient for a professional engagement contract. In the case of dispute, it will be incumbent on the grieving party to prove binding agreement. If the engager denies any portion of it or claims misunderstanding on your part, what recourse do you have? Save verbal agreements for a “contract” with your neighbour’s teenager to shovel the front walk – don’t entrust your livelihood to one.

As for the green room wisdom that a verbal job offer equals a verbal contract, Samuel Goldwyn’s famous quip comes to mind: “a verbal contract isn’t worth the paper it’s written on.”

So, what’s an Artist to do?

We know that letters of intent and verbal agreements aren’t going to go away as placeholder documents pending the execution of a real contract, but it is vital that you understand what you have in *not* a contract, and cannot in most cases be pursued for fulfilment. If an engager offers you an agreement that has noticeable deficiencies in it, ask the questions necessary to fill in the blanks. Get as much information up front as you possibly can. If an engager is a PACT member, adherent to the CTA, they have an obligation to issue a proper contract within ten days, where possible. If this is not possible, you might want to ask why.

Final words

Never start work without a signed contract. This is one of your principal duties as a member, and an important obligation to your own professional welfare. This is, after all, your career we’re talking about, not a hobby. The overwhelming majority of engagements begin and end without incident, but when they don’t, a signed contract is vital to ensure our ability to act effectively on your behalf.

This document has been produced for the convenience of members, and to serve as a resource. Any specific questions or concerns regarding letters of intent or verbal contracts should be directed to a Business Representative in Equity’s National or Western offices.